



**Petition Number:** 1604-VS-06

**Subject Site Address:** 1821 E 151<sup>st</sup> Street (the “Property”)

**Petitioner:** MAC’s Convenience Stores LLC (the “Petitioner”)

**Request:** The petitioner is requesting Variances of Development Standard to a previously granted Special Exception for a Gasoline Service Station related to Minimum Setback Lines (Article 4.23(F)), Screening of Receptacle and Loading Areas (Article 6.1), Architectural Standards (Article 6.3), Landscaping Standards (Article 6.8), and Outdoor Storage and Display (Article 6.12) in the SB-PD: Special Business/Planned Development District.

**Current Zoning:** SB-PD: Special Business/Planned Development District

**Current Land Use:** Retail, Gasoline Service Station

**Approximate Acreage:** 1.545 acres +/-

**Exhibits:**

1. Staff Report
2. Location Map
3. Detailed Development Plan
4. Elevations
5. Landscape Plan
6. Application
7. Letter of Grant 83-SE-3

**Staff Reviewer:** Pam Howard, Associate Planner

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## **OVERVIEW**

**Location:** The Property is approximately 1.545 acres +/- in size and located at 1821 E 151<sup>st</sup> Street, an Outlot within the Village Park Plaza shopping center (see Exhibit 2). The Property is zoned the SB-PD: Special Business / Planned Development (“SB-PD”) District. Adjacent properties are zoned the SB-PD District or the LB-PD: Local Business/Planned Development District.

**Property History:** On February 21, 1983 the Board of Zoning Appeals granted a Special Exception to permit operation of a Gasoline Service Station on this site (Exhibit 7).

**Variances:** As depicted in Exhibit 3 (the “Detailed Development Plan”), Exhibit 4 (the “Elevations”) and Exhibit 5 (the “Landscape Plan”), the Petitioner is requesting Variances of Development Standard to accommodate the reconstruction of the existing Gasoline Service Station. The next section further details the variances requested.



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## **SUMMARY OF VARIANCES**

The unique attributes of this site create some development constraints that require a variance.

**Variance #1: Article 4.23(F) Minimum Setback Lines:** The petitioner requests a reduction in the Minimum Setback Lines as follows:

- a) A reduction in the Minimum Front Yard Setback along US 31 from sixty (60) feet to twenty-eight (28) feet.
- b) A reduction in the Rear Yard Setback from twenty (20) feet to ten (10) feet.

The Property's location on US 31, 151<sup>st</sup> Street, and Thatcher Lane results in the Property having three (3) Front Yards.

**Variance #2: Article 6.1 Accessory Use and Building Standards; Screening of Receptacles and Loading Areas:** The petitioner requests that Article 6.1(H)(2)&(5) not apply to the property.

**Article 6.1(H)(2):** Enclosures shall not be located in an Established Front Yard or in any Required Side or Rear Yard.

**Article 6.1(H)(5):** Enclosures shall be equipped with opaque gates, as illustrated in FIGURE 6.1(2): DUMPSTER ENCLOSURES, that shall not be oriented towards residential properties or the Right-of-way, where possible.

The Property's location on US 31, 151<sup>st</sup> Street, and Thatcher Lane results in the Property having three (3) Front Yards. Therefore, the only option to avoid a variance would be to place the dumpster enclosure on the south side of the building, requiring the building to be constructed further north. This would cause site design issues including access and traffic circulation.

**Variance #3: Article 6.8 Landscaping Standards:** The petitioner requests the following variances of the landscaping standards for the property:

- a) Minimum Lot Landscaping Requirements (Article 6.8(K)): Reduction in the number of shade trees required from 15 to 7
- b) External Street Frontage Landscaping Requirements (Article 6.8(M)):
  1. Reduction in the number of Shade/Evergreen trees from 8 to 2 along US 31 frontage;
  2. Reduction in the number of Shade/Evergreen trees from 7 to 2 along 151<sup>st</sup> Street frontage;
  3. Reduction in the number of Shade/Evergreen trees from 8 to 1 along Thatcher Lane frontage; and
  4. Reduction in the number of Shrubs from 63 to 35 along Thatcher Lane frontage
- c) Interior Parking Area Landscaping (Article 6.8(O)(1)): That this section not apply.



Variance #4: Outdoor Storage and Display (Article 6.12): The petitioner requests that Article 6.12(C)(1)(b)(iii) and 6.12(C)(1)(c)(iii) not apply to the property.

Article 6.12(C)(1)(b)(iii): Shall be prohibited in an Established Front Yard.

Article 6.12(C)(1)(c)(iii): Perimeter access into Outside Storage areas shall not be oriented toward a Front Yard. Gates shall be required for such access and shall be opaque and architecturally compatible with the materials used on the Principal Building. A chain link fence or a variation of a chain link fence combination shall not constitute an acceptable gate material.

The Property's location on US 31, 151st Street, and Thatcher Lane results in the Property having three (3) Front Yards. Therefore, the only option to avoid a variance would be to place the Outdoor Storage area on the south side of the building, requiring the building to be constructed further north.

Variance #5: Architectural Standards (Article 6.3): The petitioner requests that the standards of Article 6.3(F)(5)(b) not apply to the rear elevation of the building.

Article 6.3(F)(5)(b) Architectural Standards; Business Districts; Building Elevations; Wall Planes: Building Facades, which are ninety (90) feet or greater in length, shall be designed with offsets (projecting or recessed) at intervals of not greater than sixty (60) feet. Buildings less than ten thousand (10,000) square feet in Gross Floor Area shall be designed with offsets at interval of not greater than forty (40) feet. Offsets shall extend the entire vertical plane of the Building Facade and shall be a minimum depth of four (4) feet and a minimum aggregate length of twenty percent (20%) of the horizontal plane of the overall Building Facade. The offset may be met with setbacks of the Building Facade and/or with architectural elements (i.e. arcades, columns, ribs, piers, and pilasters), if such architectural elements meet the minimum offset requirements of this requirement.

The Property's location on US 31, 151st Street, and Thatcher Lane results in the Property having three (3) Front Yards. Therefore, many of the property's utilities are located between the rear of the building and the south property line. To accommodate the 4' offsets, the building would need to be relocated further north. This would cause site design issues including access and traffic circulation.

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### **COMPREHENSIVE PLAN**

The Future Land Use Plan in the Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan") identifies the properties as "Regional Commercial". The existing commercial center meets many of Comprehensive Plan's development policies for this area, including, but not limited to: (i) Reserve exclusively for regional commercial development; (ii) Permit regional commercial uses only in planned centers with consistent design and architectural



style for each center; (iii) require that buildings be designed to enhance the community character; and (iv) required the size, materials, color, and design of buildings to be unique to Westfield. "Franchise" architecture that represents no effort to create a unique design that fits Westfield-Washington Township is not acceptable. The Comprehensive Plan is not law; rather, it is intended to serve as a guide in making land use decisions.

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## **PROCEDURAL**

**Public Notice:** The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the April 12, 2016, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

**Conditions:** The UDO<sup>1</sup> and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

**Acknowledgement of Variance:** If the Board of Zoning Appeals approves this petition, then the UDO<sup>2</sup> requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

**Variances of Development Standard:** The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

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<sup>1</sup> Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

<sup>2</sup> Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

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### **DEPARTMENT COMMENTS**

**The Department recommends the Board motions and votes separately for each separate Variance of Development Standard.**

**Approval:** If the Board is inclined to approve the variances, then the Department recommends approval with the conditions and findings as set forth below:

**Variance #1:** Petitioner requests a reduction in the Minimum Front Yard Setback along US 31 from sixty (60) feet to twenty-eight (28) feet, and a reduction in the Rear Yard Setback from twenty (20) feet to fourteen (14) feet.

**Recommended Condition:** No recommended condition.

**Variance #2:** Petitioner requests that Article 6.1(H)(2)&(5) (Screening of Receptacles and Loading Areas) not apply.

**Recommended Condition:** No recommended condition.

**Variance #3:** The petitioner requests the following variances of the landscaping standards for the property:

- a) Minimum Lot Landscaping Requirements (Article 6.8(K)): Reduction in the number of shade trees required from 15 to 7
- b) External Street Frontage Landscaping Requirements (Article 6.8(M)):
  1. Reduction in the number of Shade/Evergreen trees from 8 to 2 along US 31 frontage;
  2. Reduction in the number of Shade/Evergreen trees from 7 to 2 along 151<sup>st</sup> Street frontage;
  3. Reduction in the number of Shade/Evergreen trees from 8 to 1 along Thatcher Lane frontage; and
  4. Reduction in the number of Shrubs from 63 to 35 along Thatcher Lane frontage
- c) Interior Parking Area Landscaping (Article 6.8(O)(1)): That this section not apply.

**Recommended Condition:** Landscaping shall be installed as shown on in Exhibit 5.



**Variance #4:** Petitioner requests that the standards of 6.12(C)(1)(b)(iii) and 6.12(C)(1)(c)(iii) (Outdoor Storage and Display) not apply.

**Recommended Condition:** Outdoor sales items shall not be visible from outside the enclosed display area.

**Variance #5:** Petitioner requests that the standards of Article 6.3(F)(5)(b) (Wall Planes) not apply to the rear elevation of the building.

**Recommended Condition:** No recommended condition.

**Recommended Findings for Approval:** If the Board is inclined to approve the variances, then the Department recommends the findings as set forth below, for each variance:

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

**Finding:** It is unlikely that approving the requested variance(s) would be injurious to the public health, safety, morals, and general welfare of the community because the use of the property will not change and all applicable safety requirements will be met.

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

**Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The variance should not have a negative impact on surrounding properties because it will allow the property to be improved from its current condition without a change in use.

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

**Finding:** Strict adherence to the zoning ordinance would result in the inability to improve the property from its current state and would result in the property remaining in its current condition.

**Denial:** If the Board is inclined to deny a requested variance, then the Department recommends denying that specific variance, and then tabling the adoption of findings until the Board's next meeting with direction to the Department to prepare the findings pursuant to the public hearing evidence and Board discussion.