

**METROPOLITAN DEVELOPMENT COMMISSION**

January 2, 2025

|                               |                                                                                                      |
|-------------------------------|------------------------------------------------------------------------------------------------------|
| <b>Case Number:</b>           | 2024-ZON-124                                                                                         |
| <b>Property Address:</b>      | 10026 East 21 <sup>st</sup> Street                                                                   |
| <b>Location:</b>              | Warren Township, Council District #15                                                                |
| <b>Petitioner:</b>            | Mitthoeffer Properties, by David D. Wilson                                                           |
| <b>Current Zoning:</b>        | D-4 and C-3                                                                                          |
| <b>Request:</b>               | Rezoning on 0.46 acre from the D-4 and C-3 districts to the C-5 district to provide for retail uses. |
| <b>Current Land Use:</b>      | Vacant property                                                                                      |
| <b>Staff Recommendations:</b> | Denial.                                                                                              |
| <b>Staff Reviewer:</b>        | Kathleen Blackham, Senior Planner                                                                    |

**PETITION HISTORY**

The Hearing Examiner acknowledged the timely automatic continuance filed by a registered neighborhood organization that continued this petition from the November 14, 2024 hearing, to the December 12, 2024 hearing.

This petition was heard by the Hearing Examiner on December 12, 2024. After a full hearing, the Hearing Examiner recommended denial of the rezoning. Subsequently, the petitioner filed an appeal of the Hearing Examiner's decision. A memorandum of her recommendation is attached.

**STAFF RECOMMENDATION**

Denial. If approved, staff would request that approval be 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 59.5-foot half right-of-way shall be dedicated along the frontage of East 21<sup>st</sup> Street, 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 the 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).
2. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptacles provided for the proper disposal of trash and other waste.

## PETITION OVERVIEW

This 0.46-acre site, zoned D-4 and C-3, is developed with a vacant commercial office and associated parking. It is surrounded by a parking lot to the north, zoned C-3; a single-family dwelling to the east, zoned D-4; commercial uses to the west, zoned C-3; and a single-family to the south, across East 21<sup>st</sup> Street, zoned D-4.

## REZONING

The request would rezone the site to the C-5 (General Commercial) District. “The C-5 District is designed to provide areas for those retail sales and service functions whose operations are typically characterized by automobiles, outdoor display, or sales of merchandise; by major repair of motor vehicles; by outdoor commercial amusement and recreational activities; or by activities or operations conducted in buildings or structures not completely enclosed. The types of uses found in this district tend to be outdoor functions, brightly lit, noisy, etc. Therefore, to provide a location where such uses can operate in harmony with the vicinity, the C-5 district should be located on select heavy commercial thoroughfares and **should avoid locating adjacent to protected districts.**”

The Comprehensive Plan recommends office commercial typology for the site. This typology serves as an appropriate buffer from the more intense commercial uses to the west and north. The previous office use was consistent with the Plan recommendation. However, the existing parking lot encroaches approximately 26 feet into the right-of-way of East 21<sup>st</sup> Street, leaving no space for the required landscaping along the street frontage.

The request referenced display of used cars, which would be vehicle-related operations that would require the C-5 district, which would not be consistent with the Plan recommendation of office commercial. The C-5 district would allow for encroachment of intense and inappropriate commercial uses into the residential neighborhood that would be detrimental and negatively impact the adjacent land uses.

Staff would note that the C-5 district would allow for 60 primary uses and 22 accessory uses, many of which would not be appropriate or acceptable for the surrounding residential neighborhood. See Exhibit A.

Removing the pavement and parking out of the right-of-way along with the requested dedication of right-of-way (below) would leave little room for display of used vehicles. Staff believes this is further evidence that a C-5 district would not be supportable or appropriate for this site.



## Department of Public Works

The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 59.5-foot half right-of-way along East 21<sup>st</sup> Street. This dedication would also be consistent with the Marion County Thoroughfare Plan.

## Environmental Public Nuisances

The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.

All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.

Environmental public nuisance means:

1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

## GENERAL INFORMATION

|                           |                            |
|---------------------------|----------------------------|
| <b>Existing Zoning</b>    | C-3 / D-4                  |
| <b>Existing Land Use</b>  | Commercial office (vacant) |
| <b>Comprehensive Plan</b> | Office Commercial          |

| <b>Surrounding Context</b>        | <b>Zoning</b>    | <b>Land Use</b>                                                   |
|-----------------------------------|------------------|-------------------------------------------------------------------|
| North:                            | C-3              | Commercial uses                                                   |
| South:                            | D-4              | Single-family dwelling                                            |
| East:                             | D-4              | Single-family dwelling                                            |
| West:                             | C-3              | Commercial uses                                                   |
| <b>Thoroughfare Plan</b>          |                  |                                                                   |
| East 21 <sup>st</sup> Street      | Primary arterial | Existing 90-foot right-of-way and proposed 119-foot right-of-way. |
| <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>                  | N/A              |                                                                   |
| <b>Site Plan (Amended)</b>        | N/A              |                                                                   |
| <b>Elevations</b>                 | N/A              |                                                                   |
| <b>Elevations (Amended)</b>       | N/A              |                                                                   |
| <b>Landscape Plan</b>             | N/A              |                                                                   |
| <b>Findings of Fact</b>           | N/A              |                                                                   |
| <b>Findings of Fact (Amended)</b> | N/A              |                                                                   |
| <b>C-S/D-P Statement</b>          | N/A              |                                                                   |

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

The Comprehensive Plan recommends Office Commercial typology. 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.

### Pattern Book / Land Use Plan

The Comprehensive Plan consists of two components that include The Marion County Land Use Pattern Book (2019) 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 – Office Commercial Typology*
  - 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.
  - Master planned developments more than two 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.*)
  - Appropriate as a primary use only in major employment centers.
  - 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.

#### 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)

- The Marion County Thoroughfare Plan (2019) “is a long-range plan that identifies the locations classifications and different infrastructure elements of roadways within a defined area.”
- The following listed items describe the purpose, policies and tools:
  - Classify roadways based on their location, purpose in the overall network and what land use they serve.
  - Provide design guidelines for accommodating all modes (automobile, transit, pedestrians, bicycles) within the roadway.
  - Set requirements for preserving the right-of-way (ROW)
  - Identify roadways for planned expansions or new terrain roadways
  - Coordinate modal plans into a single linear network through its GIS database



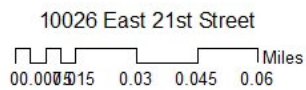
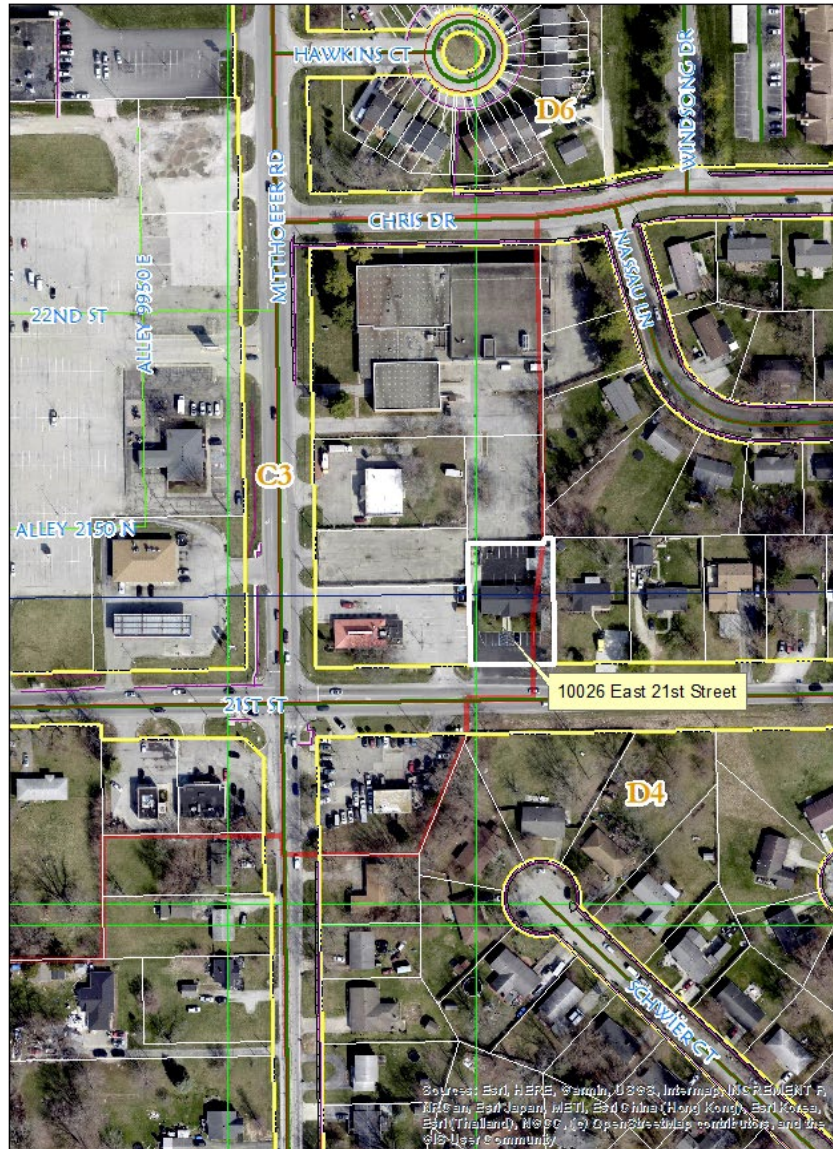
## ZONING HISTORY

**2003-UV3-038; 9936 and 9942 East 21<sup>st</sup> Street (west of site)**, requested a variance of use of the Commercial Zoning Ordinance to provide for a convenience store and gasoline station, with an automatic and self-service car wash, **granted**.

**82-UV3-027, 9942 East 21<sup>st</sup> Street (west of site)**, requested a variance of use of the Commercial Zoning Ordinance to provide for a gasoline service station with a six-bay car wash, **granted**.

**66-Z-3; 9942 East 21<sup>st</sup> Street (west of site)**, requested rezoning of one acre from the B-3 district to the B-4 district to provide for the construction of a gasoline service station, **approved**.

EXHIBITS





**MEMORANDUM OF EXAMINER'S DECISION**

**2024-ZON-124**

**10026 East 21st Street**

The petition requests the rezoning of 0.46 acre from the D-4 and C-3 districts to the C-5 district to provide for retail uses.

Your Hearing Examiner visited the site prior to the hearing and noted a commercial building with the balance of the site hard surfaced. Single family residences abut the site on the northeast and east and are south of 21st Street, and commercial uses are west and north of it.

The petitioner explained that the building was constructed about 40 years ago. He obtained the site several months ago and has been trying to improve it. He has several tenants in the building, and wants to sell cars on the site, with about 10 cars displayed on 21st Street. He wants to provide affordable means of transportation for neighbors, and he wants to mentor youth in the area.

Although remonstrators did not attend the hearing, there was a letter of opposition from Warren Township Development Association.

Staff stated that C-5 is too intense for this site, it should not be located adjacent to a protected district, and it does not conform with the Comp Plan recommendation of office buffer uses. Staff also expressed concern that the site is paved into the right-of-way and auto display is proposed in the right-of-way.

While your Hearing Examiner applauds the petitioner's desire to improve the site and better the community, the requested C-5 is not consistent with the area and would allow uses that are not appropriate adjacent to protected districts. Denial of this petition was recommended.

For Metropolitan Development Commission Hearing on January 2, 2025



**EXHIBIT A**

Daily emergency shelter  
Business, art, or other post-secondary proprietary school  
Club or lodge  
Community Center  
Greenway  
Museum, Library or Art Gallery  
Public safety facility or Post Office  
Religious Uses  
Vocational, technical or industrial school or training facility  
Hospital  
Medical or Dental Offices, Centers Clinic  
Medical or Dental Laboratories  
Plasma (Blood) Center  
Substance Abuse Treatment Facility  
Animal care, Boarding  
Artisan food and beverage  
Famers' Market  
Check Cashing or Validation Service  
Consumer Services or Repair of Consumer Goods  
Financial and Insurance Services  
Hair and Body Care Salon or Service  
Laundromats  
Mortuary, Funeral Home  
Outdoor Advertising off-premises  
Printing Services  
Tattoo Parlor  
Adult Entertainment Business



**Department of Metropolitan Development  
Division of Planning  
Current Planning**

Bar or Tavern  
Eating Establishment or Food Preparation  
Indoor Recreation and Entertainment  
Indoor Spectator Venue  
Night Club or Cabaret  
Hotel, Motel or Hostel  
Office: Business, Professional or Government  
Outdoor Recreation and Entertainment  
Agricultural Sciences R and D  
Clean energy R and D  
Information technology R and D  
Life Sciences R and D  
Logistics R and D  
Adult Entertainment Business: Retail  
Department Store  
Firearm Sales  
On-going Fireworks sales,  
Grocery Store  
Liquor Store  
Pawn shop  
Light general retail  
Heavy General retail  
Local Power Generating Facility  
Substations and Utility Distribution  
Wireless Communications  
Automobile and Light Vehicle Wash  
Automobile Fueling Station  
Automobile, Motorcycle, and Light Vehicle Sales or Rental



Automobile, Motorcycle, and Light Vehicle Service or Repair

Commercial parking lot

Commercial parking garage

Transit Center

Recycling Station

**Accessory Uses**

Amateur Radio Antenna

Automated Teller Machine (ATM)

Automobile Rental Station

Bicycle Sharing

Day Care Center or Nursery School

Drive-through

Garden as a primary use

Game Courts

On-going Outdoor display and Sales

Outdoor Storage and Operations

Non-residential Outdoor Seating or Patio

Personal garden

Pick-up Station for Dry Cleaning or Laundry

Recycling Collection Point

Renewable Energy Facility Solar and Geothermal

Renewable Energy Facility Wind

Satellite Dish Antenna

Sidewalk Café

Swimming Pool or Hot Tub

Ground Transportation and Accessories

Outside Vending Machine or Self-serve Kiosk

Walk-up Window



View looking west along East 21<sup>st</sup> Street



View looking east along East 21<sup>st</sup> Street



View of site looking northwest



View of site looking north



View of site looking northeast



View from site looking south across East 21<sup>st</sup> Street



View from site looking southwest across East 21<sup>st</sup> Street