

BOARD OF ZONING APPEALS DIVISION III

August 20, 2024

Case Number: 2024-UV3-004
Property Address: 2308 Shelby Street (approximate address)
Location: Center Township, Council District #19
Petitioner: Walter Resinos
Current Zoning: C-3 (TOD)
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a tattoo parlor within 55 feet of a protected district (not permitted within 500 feet of a protected district).
Current Land Use: Commercial
Staff Recommendations: Staff **recommends approval** of this petition, subject to substantial compliance with the submitted plan of operation, file-dated 3/8/24
Staff Reviewer: Noah Stern, Senior Planner

PETITION HISTORY

ADDENDUM FOR JULY 16, 2024 BZA DIVISION III HEARING

- This petition was continued from the April 16, 2024 BZA Division III hearing to the May 28, 2024 BZA Division III hearing due to unpaid filing fees.
- The petition was continued to the July 16, 2024 BZA Division III hearing to allow for further review by interested parties.
- A timely automatic continuance was filed by a registered neighborhood organization, which continued this petition to the August 20, 2024 BZA Division III hearing without additional notice.

STAFF RECOMMENDATION

- Staff **recommends approval** of this petition, subject to substantial compliance with the submitted plan of operation, file-dated 3/8/24

PETITION OVERVIEW

- This petition would provide for the operation of a tattoo parlor within 55 feet of a protected district (not permitted within 500 feet of a protected district). The plan of operation states that the business would be open from 10am to 9pm from Monday to Saturday.
- The required spacing of certain uses is in place to provide for increased protection of sensitive land uses such as parks, schools, religious uses, dwelling districts, etc. from land uses that may potentially cause nuisances or are of increased intensity. The subject site is located directly adjacent to a D-5 dwelling district to the west. The request for 55 feet of separation does represent a significant

deviation from the Ordinance standard, which calls for at least 500 feet of separation between any protected district.

- Staff would note that while the proposal represents a sizable deviation from the permitted separation, the Zoning Ordinance is particularly restrictive of tattoo parlors, relative to other land uses that represent a similar or even greater intensity. Examples of such uses that are permitted to be closer to protected districts than tattoo parlors include night clubs, liquor stores, as well as bars and taverns, all of which are permitted to be located as close as 100 feet from protected districts. Additionally, with other uses of similar intensity having been in operation along Shelby Street for a significant portion of time, Staff believes the proposed use to be of like character to the immediate context.
- Staff would note that Shelby Street is an emerging commercial corridor located within the Red Line TOD Overlay District with the subject site being located under ¼ mile from the Raymond Street transit station, and under ½ mile from the Garfield Park transit station.
- Finally, Staff finds the proposal to be in line with the Comprehensive Plan recommendations for the Village-Mixed Use typology, which calls for a wide range of small businesses, buildings of 1-4 stories with any parking being located in the rear, pedestrian-scale amenities, and notes that uses may be mixed vertically in the same building or horizontally along a corridor, in this case Shelby Street. Therefore, for these reasons, Staff is unopposed to the variance requested.

GENERAL INFORMATION

Existing Zoning	C-3 (TOD)	
Existing Land Use	Commercial	
Comprehensive Plan	Village Mixed-Use	
Surrounding Context	Zoning	Surrounding Context
North:	C-3 (TOD)	North: Community Commercial
South:	C-3 (TOD)	South: Community Commercial
East:	C-3 (TOD)	East: Community Commercial
West:	D-5 (TOD)	West: Single-family residential
Thoroughfare Plan		
Shelby Street	Secondary Arterial	60 feet of right-of-way existing and 78 feet proposed
Hervey Street	Local Street	50 feet of right-of-way existing and 48 feet proposed
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	Yes	
Wellfield Protection Area	No	
Site Plan	3/8/24	
Site Plan (Amended)	N/A	

Elevations	N/A
Elevations (Amended)	N/A
Landscape Plan	N/A
Findings of Fact	3/8/24
Findings of Fact (Amended)	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- TOD Red Line Strategic Plan

Pattern Book / Land Use Plan

- The Marion County Land Use Plan pattern Book recommends the Village Mixed-Use typology for this site.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- The subject site is located within ¼ mile of the Shelby Street and Raymond Street transit station. This area has been classified under the community center typology, which is characterized by a dense mixed-use neighborhood center, a minimum of 2 stories at the core, no front or side setbacks at the core, and the presence of multi-family housing with a minimum of 3 units .

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

94-Z-130; rezoning of 4.43 acres, being in the C-1, C-2, C-3, and D-5 districts to the C-3 classification to conform zoning to the Garfield Park/Pleasant Run Neighborhood Plan, **approved.**

ZONING HISTORY – VICINITY

2022ZON105; 2340 & 2344 Shelby Street (south of site), Rezoning of 0.24 acre from the C-3 (TOD) district to the MU-2 (TOD) district, **approved.**

2015DV2005; 2242 Shelby Street (north of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to provide for: a) the construction of a 384-square foot detached garage for bicycle repair, an addition to the main dwelling, to be used for an espresso bar, bicycle sales and display, and bicycle and supply storage, and two decks for outdoor seating (not permitted), b) with five parking spaces (seven parking spaces required), with deficient maneuvering (not permitted), and c) to provide for a handicapped ramp, with a zero-foot front setback from Shelby Street or 30 feet from the centerline (70 feet from the centerline required), and d) to provide for a 6.25-square foot suspended sign, with less than eight feet of clearance (maximum five square feet permitted, minimum eight feet of clearance required) and a 40 square foot wall sign on the front porch parallel to Shelby Street, **approved.**

99-UV2-64; 2230-2340 Shelby Street (north of site), variance of use and development standards of the Commercial Zoning Ordinance to provide for the expansion of a tavern within 100 feet of a protected district, liver entertainment and no off-street parking, **granted.**

98-UV3-81; 2320 Shelby Street (south of site), requested a variance of use to permit the sale and repair of major appliances, **denied.**

95-UV1-35; 2320 Shelby Street (south of site), requested a variance of use to provide for a mechanical contractor operation and heavy equipment storage of an HVAC company, including storage of materials and tools *such as sheet metal fabricators, arc welder, and cleaning solvents* for HVAC service, **denied.**

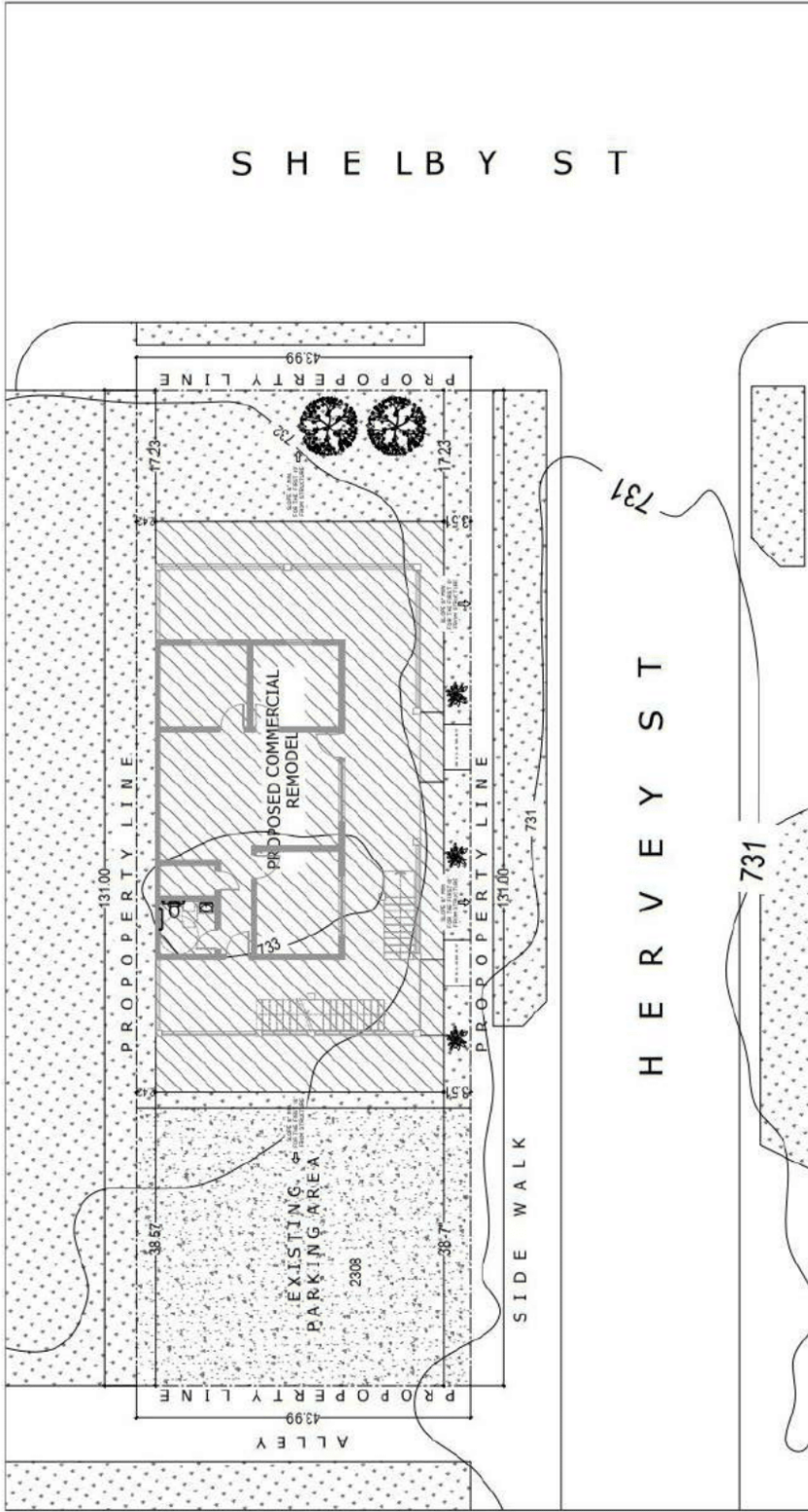
89-UV3-73; 2242 Shelby Street (north of site), requested a variance of use to permit retail sale of jewelry, coins and metals, **granted.**

87-UV2-29; 2236 Shelby Street (north of site), requested a variance of use to permit an automobile clean-up business, **denied.**

83-UV3-4; 2310 Shelby Street (north of site), requested a variance of use and development standards to permit a site-down restaurant, **granted.**

EXHIBITS





2308 SHELBY ST.
 LOT 03
 ST. CATHERINES GARFIELD PARK ADDITION

SITE PLAN

LEGAL DESCRIPTION

St. Catherines Garfield park
 ADD L3

Parking

- Parking is available in the parking lot or the street.
- Parking will be minimal since most tattoos are done by appointments. Walk ins are not encouraged.

Hours of Operation

- The tattoo shop will be open from Monday through Saturday.
- Flexible hours of operations depending on the demand/ appointments. Some days the shop will close earlier depending on the work load.
- Official hours of operations will be around 10 a.m. to 9 p.m.

Safety & Security provisions

- 360-degree security camera system outside the building.
- Camera system inside the building as well. Everyone entering the building/ tattoo shop will be recorded.
- All exits are marked.
- Smoke detectors are present in hallways, waiting areas and all offices.
- Fire extinguisher easily accessible and displayed.
- No smoking allowed inside the building.
- Since most tattoos will be done by appointment only, it will minimize the amount of people present inside the building at one time.
- Hazardous materials including needles will be safely handled and stored to prevent accidents.

Clients and Customers

- The typical clients include upstanding citizens who are interested in getting tattoos and can afford them.
- The average price of a typical tattoo starts around \$150 an hour.
- Loitering around the property is prohibited.

Materials used

- Tattoo ink, needles, sterilization chemicals, cleaning chemicals, anesthetic creams and ointments.

Shipping and receiving

- Regular shipping and receiving have their own designated areas.

Waste

- Hazardous waste materials including needles are collected by hazardous waste removal companies.

Process conducted on site

- Once the client has been checked in, he/she fills in a consent form and a copy of their ID is taken.
- Clients select the tattoo and the location they want it tattooed on their body.
- The client is placed on a special chair/ tattoo bed.
- There are bathroom breaks from time to time till completion.
- Once the process is done, the tattooist offers consultation services on how to care for the tattoo until it's completely healed, concluding the process.



Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF USE

FINDINGS OF FACT

1. THE GRANT WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY BECAUSE

It will be rented to licensed professionals that are bound to local laws & regulations that are enforced by the board of health

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 BECAUSE

it is an old fire station that is currently being used for storage. It will rather bring value to the adjacent property as it will be surrounded by more businesses.

3. THE NEED FOR THE VARIANCE ARISES FROM SOME CONDITION PECULIAR TO THE PROPERTY INVOLVED BECAUSE

the existing C-3 commercial zoning doesn't allow for a "Body Art / Tattoo Shop" to be operated on the premises without a variance of use

4. THE STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE CONSTITUTES AN UNUSUAL AND UNNECESSARY HARDSHIP IF APPLIED TO THE PROPERTY FOR WHICH THE VARIANCE IS SOUGHT BECAUSE

it will limit the additional rent income that the property can generate from the potentially multi-use building that can host various types of licensed businesses.
It will hinder the growth of the local business community due to the limited services and operations that can be provided in the area.

5. THE GRANT DOES NOT INTERFERE SUBSTANTIALLY WITH THE COMPREHENSIVE PLAN BECAUSE

The Variance that is being requested does not interfere in any way with the other surrounding businesses. it will not be near a church/house of service. It will not change the vibe of the neighborhood as there is a brewery across from the property. The Licensed Tattoo Shop will be adhering to the local safety regulations & ordinances from the board of health.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____





