



**BOARD OF ZONING APPEALS DIVISION III**

**May 28, 2024**

**Case Number:** 2024-UV3-005  
**Address:** 6901 East 38<sup>th</sup> Street (approximate address)  
**Location:** Warren Township, Council District #9  
**Zoning:** C-5 (TOD)  
**Petitioner:** Equipment Share, by Michael Rabinowitch  
**Request:** Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of heavy equipment sales and rental business (not permitted).

**Current Land Use:** Heavy equipment sales and rental business

**Staff Recommendation:** Staff recommends denial.

**Staff Reviewer:** Robert Uhlenhake, Senior Planner

**PETITION HISTORY**

This petition was previously automatically continued by the petitioner from the April 16, 2024, hearing, to the May 28, 2024, hearing. This petition was continued for cause by the petitioner from the May 28, 2024, hearing, to the July 16, 2024, hearing.

**STAFF RECOMMENDATION**

Staff recommends **denial** of this petition.

**PETITION OVERVIEW**

- ◇ The request would provide for the operation of heavy equipment sales and rental business, a C-7 use, in a C-5 district.
- ◇ The purpose of the existing C-5 district is to provide 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 community commercial uses for the subject site. The proposed use would be permitted in the C-7, High Intensity Commercial District, which is designed to provide specific areas for commercial uses which have unusually incompatible features relative to other commercial uses, such as major outdoor storage or display of sizeable merchandise and the outdoor parking and storage of trucks, materials, or equipment essential to the operation of these uses. Many of these uses generally are not visited by customers, but rather involve service operations from headquarters with some on-site fabrication of parts. The nature of operation or appearance are more compatible with industrial than retail commercial activities. Because of the character and intensity of these uses, this district should be appropriately located on major commercial arterial thoroughfares
- ◇ Given the increase in intensity between the existing zoning and the proposed use, including the amount of outdoor storage of equipment, approval of this request would facilitate the intrusion of heavy commercial uses into an established community commercial neighborhood. The request would encourage additional encroachment, in a manner violating the development norms and commercial aesthetics of the street, and squarely deviating from the recommendations of the Comprehensive Plan.
- ◇ Any deviation from the minimum standards should be related to the property, and not to the individual's needs. There is no inherent practical difficulty caused by the terms of the Ordinance upon the subject site.
- ◇ The strict application of the terms of the zoning ordinance does not constitute a hardship, nor does the site possess a practical difficulty, since the site is zoned C-5 and could be used as permitted, by right, in the C-5 zoning classification. Any practical difficulty is self-imposed by the desire to use the site for operation of a of heavy equipment sales and rental business.
- ◇ The subject site is similar in size to other nearby commercial properties, that are able to follow the comprehensive plan and zoning ordinance without the need for the requested variances. Therefore, the Comprehensive Plan recommendation should not be disregarded, nor of the community commercial nature of the surrounding area. For these reasons, staff recommends its denial.

**GENERAL INFORMATION**

<b>Existing Zoning</b>	C-5	
<b>Existing Land Use</b>	Heavy equipment sales and rental business	
<b>Comprehensive Plan</b>	Recommends Community Commercial uses	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
North:	C-4	North: Community Commercial
South:	C-S	South: Undeveloped
East:	C-4 / C-5	East: Community Commercial
West:	C-5	West: Undeveloped / Indoor Greenhouse

Thoroughfare Plan		
East 38 <sup>th</sup> Street	Primary Arterial	76-foot existing right-of-way and an 88-foot proposed right-of-way.
<b>Context Area</b>	Compact area	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	TOD	
<b>Wellfield Protection Area</b>	No	
<b>Site Plan - Updated</b>	May 13, 2024	
<b>Elevations</b>	N/A	
<b>Landscape Plan</b>	N/A	
<b>Findings of Fact</b>	March 8, 2024	

**COMPREHENSIVE PLAN ANALYSIS**

**Comprehensive Plan**

- The Comprehensive Plan recommends Community Commercial uses for the site.

**Pattern Book / Land Use Plan**

- The Comprehensive Land Use Plan recommends the Community Commercial typology which provides for low intensity commercial, and office uses that serve nearby neighborhoods. These uses are usually in freestanding buildings or small, integrated centers. Examples include small-scale shops, personal services, professional and business services, grocery stores, drug stores, restaurants, and public gathering spaces.

**Red Line / Blue Line / Purple Line TOD Strategic Plan**

- This site lies within the Purple Line Transit-Oriented Development overlay. The Transit-Oriented Development (TOD) overlay is intended for areas within walking distance of a transit station. The purpose of this overlay is to promote pedestrian connectivity and a higher density than the surrounding area. The Shadeland Stop is under construction and will be located approximately 340 feet to the east of the subject 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

**2020-UV2-001; 6901 East 38th Street (subject site)**, requested a variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for a Rug Cleaning Service and a Water and Microbial Remediation, Fire Damage Restoration and Reconstruction Services Contractor, **granted subject to commitments.**

**2017-UV2-006; 6845 Massachusetts Avenue (west of site)**, requested a variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for hydroponic farming, **granted.**

**2017-ZON-057; 6800 Pendleton Pike (north of site)**, requested the rezoning of 9.75 acres from the C-4 district to the C-S classification to provide for self-storage, truck and trailer rental and sharing and related retail uses, **approved.**

**2014-DV1-068; 6901 Pendleton Pike (north of site)**, requested a variance of development standards of the Commercial Zoning Ordinance and the Sign Regulations to provide for a fast-food restaurant building, with a drive-through; with an approximately 55-foot setback from the centerline of 38th Street and 70-foot setback from the centerline of Pendleton Pike; and with parking and access drives, with zero-foot setbacks from 38th Street and Pendleton Pike, **granted.**

**2010-UV3-005; 6801 East 38<sup>th</sup> Street (west of site)**, requested a variance of use of the Commercial Zoning Ordinance to provide for automobile sales, **denied.**

**2009-DV3-022; 6909 East 38<sup>th</sup> Street (subject site)**, requested a variance of Development Standards of the Sign Regulations to provide for a 21-foot tall, 99.162-square foot pole sign, with a nine-foot front setback from the existing right-of-way of 38th Street, **granted.**

**2007-ZON-841/2007-VAR-841; 3502 North Shadeland (south of site)**, requested a rezoning of 21.435 acres from the I-2-S District, to the C-S classification, to provide for mini-warehouses and automobile, truck and bus repair with a 7.1-acre, paved outdoor storage area for vehicles and a 9.1-acre, gravel outdoor storage area for vehicles; and a variance of development standards of the Commercial Zoning Ordinance to provide for a ten-foot east side transitional yard along a 60-foot section of the east property line, **approved.**

**88-Z-115; 6901 East 38<sup>th</sup> Street (subject site)**, requested the rezoning of 9.5 acres, being in the C-4 district, to the C-5 classification to conform the zoning with the existing use, **approved.**

**80-Z-152; 6909 East 38<sup>th</sup> Street (subject site)**, requested the rezoning of 1.67 acres, being in the D-3 district, to the C-5 classification, to provide for an automobile showroom, **approved.**

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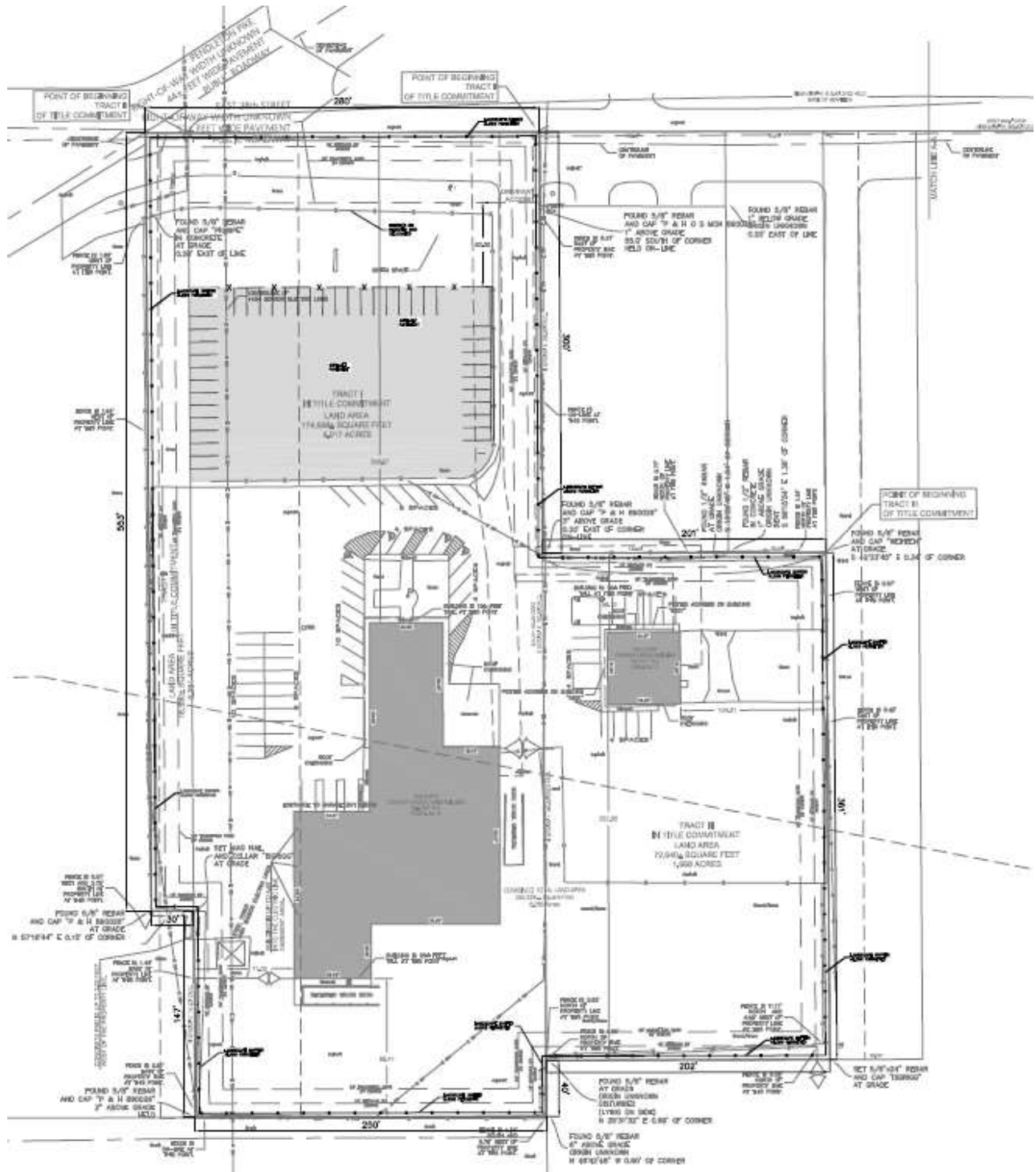
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EXHIBITS

Location Map



**Site Plan**



## Plan of Operation

### Plan of Operation

6801 E. 38<sup>th</sup> Street

#### I. Description of Business Operations

EquipmentShare is a nationwide construction technology company dedicated to increasing industry productivity through smart jobsite technology and equipment rental, retail and service centers. EquipmentShare primarily engages in business to business transactions with limited retail customer interaction. The company uses technology to allow for mobile ordering and site delivery for tool and equipment rental.

##### A. Advanced Solutions Division

EquipmentShare's Advanced Solutions Division specializes in the rental of Climate Control Equipment, Compressed Air Systems, Fluid Solutions and Power Solutions and Industrial Tooling Solutions. Examples of these systems include:





B. Tooling Solutions Division

The Tooling Solutions Division specializes in the rental of light duty and industrial equipment used to carry out specific tasks in the construction or manufacturing process. These tools include welders, various handheld tools, saws, cutters, and pipe fabricators. More specific examples of these systems include:

- Mobile Tool Trailers
- Weldin, Cutting and Pipe Fabrication
- Hazardous Location Lighting Equipment
- Electric Contractor Tools
- Industrial Supplies
- Material Handling
- Torquing, Hydraulic, and Electrical Power Tools
- Compressed Air Tools
- Tool Testing, Certification, and Repair
- Safety and Communication Equipment





### Example of Tooling Solutions Handheld Tooling Equipment

#### III. Typical Hours of Operation

Typical hours of operation are Monday through Friday 7:00 AM to 5:00 PM. Typically closed on weekends and most major holidays.

#### IV. Employees on Site

Jobs on site would be full-time, benefited and family-supporting at more than 20% above the average median income including yard techs, mechanics, drivers, administrative support, telematics installation specialists and management...and have a multiplier effect by spurring new job growth in the construction industry and beyond. Active workforce development programs exist at every branch, which include apprenticeships, fellowships and on-the-job training. EquipmentShare anticipates that there will be 12-15 employees on site at any given time.



**Findings of Fact**

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**

The proposed use, which will be properly fenced, secured and landscaped, will not interfere with any of the neighboring uses and provides an important service vital to the construction industry within the community.

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**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**

The proposed use, which will be properly fenced, secured and landscaped, will not interfere with any of the neighboring uses and provides an important service vital to the construction industry within the community.

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

The property is located in an area where there are adjacent industrial uses that are of the same intensity or more intense than the proposed use.

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**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**

The construction equipment rental, sales, and service business has existed on the property for more than two years and similar uses are permitted by right in the existing C-5 zoning.

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

The comprehensive plan recommendation is for community commercial which permits some limited larger scale businesses like the one proposed so long as it is not adjacent to a protected district. Also, there are other nearby industrial uses already existing in the surrounding area.

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Photographs



Subject site main entrance and building, looking south



Subject site second parcel and building, looking southeast



Subject site, outdoor storage of heavy equipment looking north



Subject site, outdoor storage of heavy equipment looking southwest



Subject site, outdoor storage of heavy equipment looking northwest



Subject site, outdoor storage of heavy equipment looking northeast