



Department of Metropolitan Development  
Division of Planning  
Current Planning

BOARD OF ZONING APPEALS DIVISION I

March 7, 2023

**Case Number:** 2023-UV1-006

**Property Address:** 201 West 38th Street and 3750 North Capitol Avenue (approximate address)

**Location:** Center Township, Council District #7

**Petitioner:** Martin Petroleum Inc., by Pat Rooney

**Current Zoning:** C-4 / D-5

**Request:** Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the redevelopment of a convenience store within a residential district (not permitted) with a zero-foot south side transitional yard (10-foot side transitional yard required), a dumpster enclosure within the front yard of West 38th Street (not permitted in front yards), zero bicycle parking spaces provided (three bicycle spaces required) and eight frontage trees provided (nine required).

**Current Land Use:** Commercial (Automobile fueling station)

**Staff Recommendations:** Denial

**Staff Reviewer:** Marleny Iraheta, Senior Planner

PETITION HISTORY

This petition is scheduled to be heard March 7, 2023, by the Board of Zoning Appeals Division I.

STAFF RECOMMENDATION

Staff is recommending denial of the request.

PETITION OVERVIEW

VARIANCE OF USE

This request would allow the redevelopment of a convenience store within the D-5 and C-4 districts. The site consists of two parcels with the north parcel split zoned between D-5 and C-4 and the southern parcel zoned D-5.

The purpose of the C-4, Community-Regional District is to provide for the development of major business groupings and regional-size shopping centers to serve a population ranging from a community or neighborhoods to a major segment of the total metropolitan area. The uses permitted in this district may feature several large traffic generators and require excellent access from major thoroughfares.

The purpose of the D-5 (Dwelling District Five) district is intended for medium intensity residential development and is not intended for suburban use. The application of this district will be found within urban, build-up areas of the community and where all urban public and community facilities and services are available. The D-5 district typically has a density of 4.5 units per gross acre. This district fulfills the low and medium density residential classification of the Comprehensive General Land Use Plan.

The Comprehensive Plan recommends village mixed-use development for the northern parcel (201), which the C-4 (community-regional commercial) District would be consistent with the recommendation, depending upon the context of the site. In this case, surrounding land uses are commercial along the north, west and east, but low-density residential is located south and would not be adequately buffered from this more intense 24-hour / seven-day use. The proposed use would not be appropriate for the southern parcel because the Comprehensive Plan recommends traditional neighborhood development, which would align more with small-scale offices, retailing, and personal or professional services rather than a regional use.

The commercial intensity and the impact upon the surrounding residences would include, but not be limited to, light, noise, and trash. Furthermore, the proposed use would be more of a regional draw, rather than serving just the surrounding residential neighborhood and would be a wholly and inappropriate commercial encroachment into a D-5 protected district. For these reasons, staff is recommending denial of the variance of use.

Staff would note that the existing site at 201 West 38<sup>th</sup> Street could be completely rezoned to C-4 to prevent issues with developing the site in the future.

## **VARIANCE OF DEVELOPMENT STANDARDS**

This request would provide for a zero-foot south side transitional yard where the Ordinance requires a 10-foot south side transitional yard. The purpose of the 10-foot transitional yard is to provide separation and a buffer between residential uses and more intense uses, such as a fueling station and convenience store. The impact of this 24-hour, seven-day operation upon residential uses would be magnified with the proposed transitional yard reductions. Admittedly, the configuration of the site presents development challenges with dwelling district at the northwest corner, but staff determined the reduced setbacks are a result of the proposed expansion of the use, which would be detrimental to the surrounding neighborhood.

This request would allow for a trash container service area to encroach into the front yard of 38<sup>th</sup> Street in the front of the building line of the primary building when the Ordinance prohibits service areas in front of the primary building. The dumpster enclosure could be moved south to align with the front building façade to eliminate this variance request.

The site would not have the necessary bicycle parking spaces on site, but they could be proposed to eliminate this variance as well.

Lastly, the request would provide for eight frontage trees where nine are required. Staff would note that one of the proposed trees could be relocated to be within 10 feet of the eastern property boundary for it to count towards the required frontage trees and meet the requirement without the need for this variance.

The lack of a south transitional yard, the location of the trash container service area in the front yard and the lack of bicycle spaces and deficient frontage trees show clear evidence that this site is not suitable for a convenience store and fueling station and would have a negative impact on the surrounding residential neighborhood. The proposed use would be better suited on a site that would accommodate the proposed use, while complying with required development standards.

If approved against staff's recommendation, the Department of Public Works would request that the eastern most driveway along 38<sup>th</sup> Street be closed to reduce vehicular conflicts with the heavy pedestrian traffic along this corridor.

## GENERAL INFORMATION

<b>Existing Zoning</b>	C-4 / D-5	
<b>Existing Land Use</b>	Commercial / Undeveloped Lot	
<b>Comprehensive Plan</b>	Village Mixed-Use and Traditional Neighborhood Development	
<b>Surrounding Context</b>	<b><u>Zoning</u></b>	<b>Surrounding Context</b>
	North: C-3	North: Commercial
	South: D-5	South: Undeveloped Lot
	East: C-4 / D-5	East: Commercial / Residential
	West: D-5	West: Commercial and Residential
<b>Thoroughfare Plan</b>		
Enter Street(s)	38 <sup>th</sup> Street Capitol Avenue	Primary arterial street. Primary arterial street.
<b>Context Area</b>	Compact	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	Yes	
<b>Wellfield Protection Area</b>	No	
<b>Site Plan</b>	January 20, 2023	
<b>Site Plan (Amended)</b>	N/A	
<b>Elevations</b>	January 20, 2023	
<b>Elevations (Amended)</b>	N/A	
<b>Landscape Plan</b>	N/A	
<b>Findings of Fact</b>	January 20, 2023	
<b>Findings of Fact (Amended)</b>	N/A	

## COMPREHENSIVE PLAN ANALYSIS

### **Comprehensive Plan**

- Marion County Land Use Plan Pattern Book (2019)
- Red Line Transit-Oriented Development Strategic Plan (2021)
- Indy Moves Transportation Integration Plan (2018)

### **Pattern Book / Land Use Plan**

- The Pattern Book recommends Village Mixed-Use and Traditional Neighborhood development.
- The subject site is also located within a Transit-Oriented Development (TOD) overlay within the Pattern Book, but it does not remove uses included in this request.
- The Village Mixed-Use typology creates neighborhood gathering places with a wide range of small businesses, housing types, and public facilities. This typology is intended to strengthen existing, historically small town centers as well as to promote new neighborhood centers. Businesses found in this typology serve adjacent neighborhoods, rather than the wider community. This typology is compact and walkable, with parking at the rear of buildings. Buildings are one to four stories in height and have entrances and large windows facing the street. Pedestrian-scale amenities such as lighting, landscaping, and sidewalk furniture also contributes to a walkable environment in this typology. Uses may be mixed vertically in the same building or horizontally along a corridor. Public spaces in this typology are small and intimate, such as pocket parks and sidewalk cafes. This typology has a residential density of 6 to 25 dwelling units per acre.
- The Traditional Neighborhood typology includes a full spectrum of housing types, ranging from single family homes to large-scale multifamily housing. The development pattern of this typology should be compact and well-connected, with access to individual parcels by an alley when practical. Building form should promote the social connectivity of the neighborhood, with clearly defined public, semi-public, and private spaces. Infill development should continue the existing visual pattern, rhythm, or orientation of surrounding buildings when possible. A wide range of neighborhood-serving businesses, institutions, and amenities should be present. Ideally, most daily needs are within walking distance. This typology usually has a residential density of 5 to 15 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.

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

- The site is located within the Red Line TOD Strategic Plan, but it is not located within the Transit Oriented Development Secondary Zoning District.

- The closest station to the site is located within a ½ mile to the east at the intersection of 38<sup>th</sup> Street and Meridian Street. This station is categorized as a District Center with the potential for a dense mixed-use hub for multiple neighborhoods with tall buildings, minimum of 3 stories with no front or side setbacks, multi-family housing with a minimum of 5 units and structured parking only with active first floor.
- TOD investments here should leverage significantly higher residential and employment densities, demonstrations projects, urban living amenities and workforce housing.

#### **Neighborhood / Area Specific Plan**

- Not Applicable to the Site.

#### **Infill Housing Guidelines**

- If residential development were proposed, then these guidelines would help to provide a framework that allows for new types of development to occur in a way that is compatible with existing development.

#### **Indy Moves**

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Indy Moves Transportation Integration Plan (2018), which includes PedalIndy Bicycle Master Plan, notes that 38<sup>th</sup> Street will be proposed as an off-street multi-use path with Complete Street upgrades from Eagle Creek Pkwy to Meridian Street.
- The West 38th Street multi-use path will provide a critical east-west connection on the near Northwest side of Indianapolis. To complete the multi-use path, no driving lanes will be removed, so impacts to drivers will be minimal. The path will include bicycle and pedestrian bridges over Crooked Creek, Guion Road, and Little Eagle Creek, with modifications to bridges over the White River and Central Canal.
- The plan would consider pedestrian and bicycle network/route connectivity, sidewalk/multi-use path consistency; reducing unnecessary road crossings as permitted, and for facilities to be designed for the safety & comfort for all ages and ability levels.
- Capitol Avenue is developed with an on-street bike lane per Indy Bike Master Plan (2011).

## ZONING HISTORY

### ZONING HISTORY – SITE

#### EXISTING VIOLATIONS

None.

#### PREVIOUS CASES

**85-UV1-34; 201 West 38th Street** (subject site), Variance of development standards of the Commercial Zoning Ordinance to provide for the construction and use of a convenience store with gasoline sales. Development will include an 8.6-foot rear transitional yard (20 feet required) and a pole sign located at six and eight feet from 38th Street and Capitol Avenue respectively (15 feet required), **granted**.

### ZONING HISTORY – VICINITY

**2018-UV3-026; 227 West 38th Street** (west of site), Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for an automobile repair facility (not permitted), **granted**.

**2013-CVR-814; 148 West 28th Street** (northeast of site), Variance of development standards of the Commercial Zoning Ordinance to provide for a gasoline station and a 484-square foot addition to an existing building, with a canopy with a 64.42-foot setback from the centerline of Capitol Avenue (70-foot setback from centerline required), with a parking area with a zero-foot setback from Capitol Avenue (10-foot front setback required), with access drives with a 1.5-foot front setback along Capitol Avenue and a 2.5-foot front setback along 38th Street (10-foot front setback required), with carryout food service within 10 feet of a D-5 zoned protected district (100-foot separation required), **withdrawn**.

**2013-UV1-038; 202 West 38th Street** (north of site), Variance of use and development standards of the Commercial Zoning Ordinance to legally establish a 1,380-square foot storage addition (not permitted) for a tire sales and repair shop, with a one-foot north side transitional yard (20-foot transitional yard required), **withdrawn**.

**95-V1-128; 3807 Graceland Avenue** (northwest of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to legally-establish a detached garage measuring 27 x 33 feet: a) resulting in the square footage devoted to accessory buildings being 80% of the square footage devoted to the primary building (maximum 75% permitted); b) with a side yard setback from the north property line being 2.4 feet (minimum 4 feet required); c) resulting in 46% of the lot being open space (minimum 65% required), **granted**.

**93-UV2-23; 227 West 38th Street** (west of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for the continued operation of an automobile repair shop with the variance being valid only for Albert Sutton, **granted**.



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**89-AP2-4; 227 West 38th Street** (west of site), Approval of extension of time to obtain an Improvement Location Permit to modify condition #2 concerning the site plan approved pursuant to petition 88-UV2-9, **granted**.

**89-UV3-96; 148 West 28th Street** (northeast of site), Variance of use of the Commercial Zoning Ordinance to provide for a restaurant with carry-out service, **denied**.

**88-UV2-9; 227 West 38th Street** (west of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for an automobile repair business with signs. The grant shall be for a temporary period of five years, expiring January 12, 1993, **granted**.

**85-UV1-34; 201 West 38th Street** (subject site), Variance of use of the Dwelling Districts Zoning Ordinance and development standards of the Commercial Zoning Ordinance to provide for the construction and use of a convenience store with gasoline sales. Development will include a 6.6-foot rear transitional yard (20 feet required) and a pole sign located at 6 and 8 feet from 38th Street and Capitol Avenue respectively (15 feet required). The sign will also include separate panels for the food mart, gas prices and food mart items, **granted**.

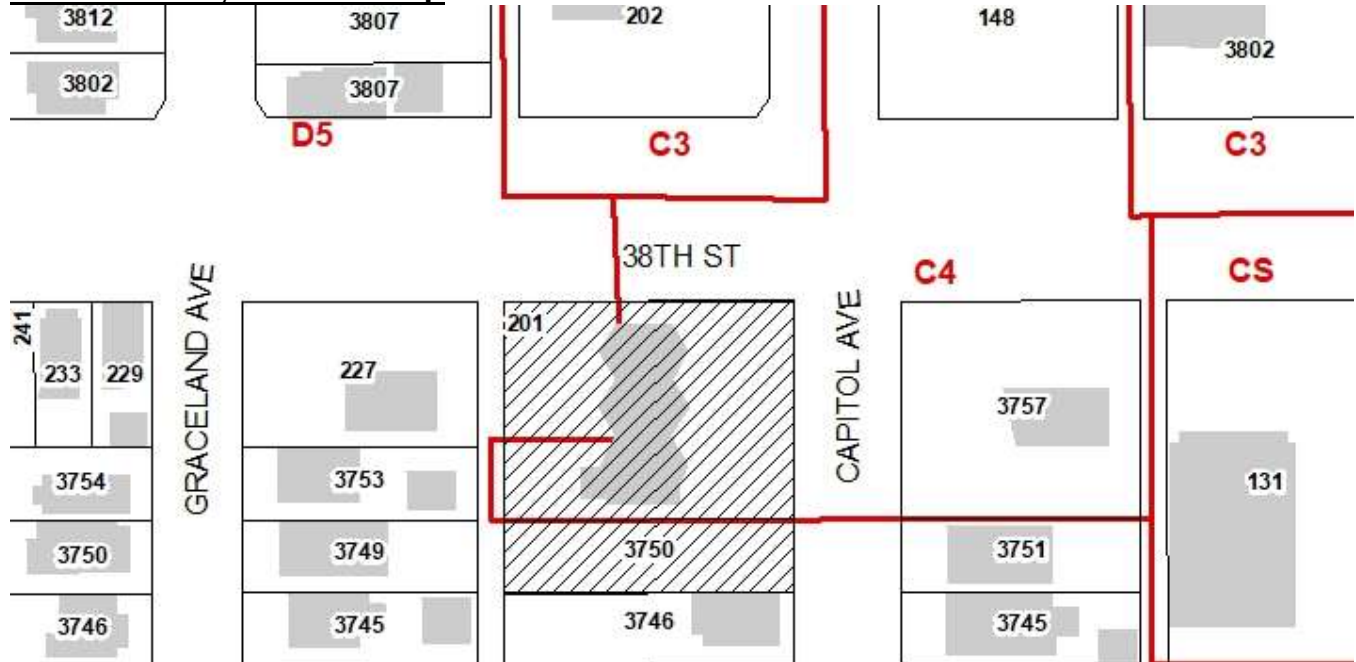
**84-UV2-21; 227 West 38th Street** (west of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for the use of a former service station for automobile repair to be a temporary variance for three years, expiring on March 20, 1987, **granted**.

**83-UV2-78; 3801 North Capitol Avenue** (northeast of site), Variance of use and development standards to provide for a carry-out restaurant within one-hundred feet of a residential zoning district, a reduction in required transitional yards, a drive-up window canopy in required front yard setback and a pole sign within the clear-sight area, **granted**.



**EXHIBITS**

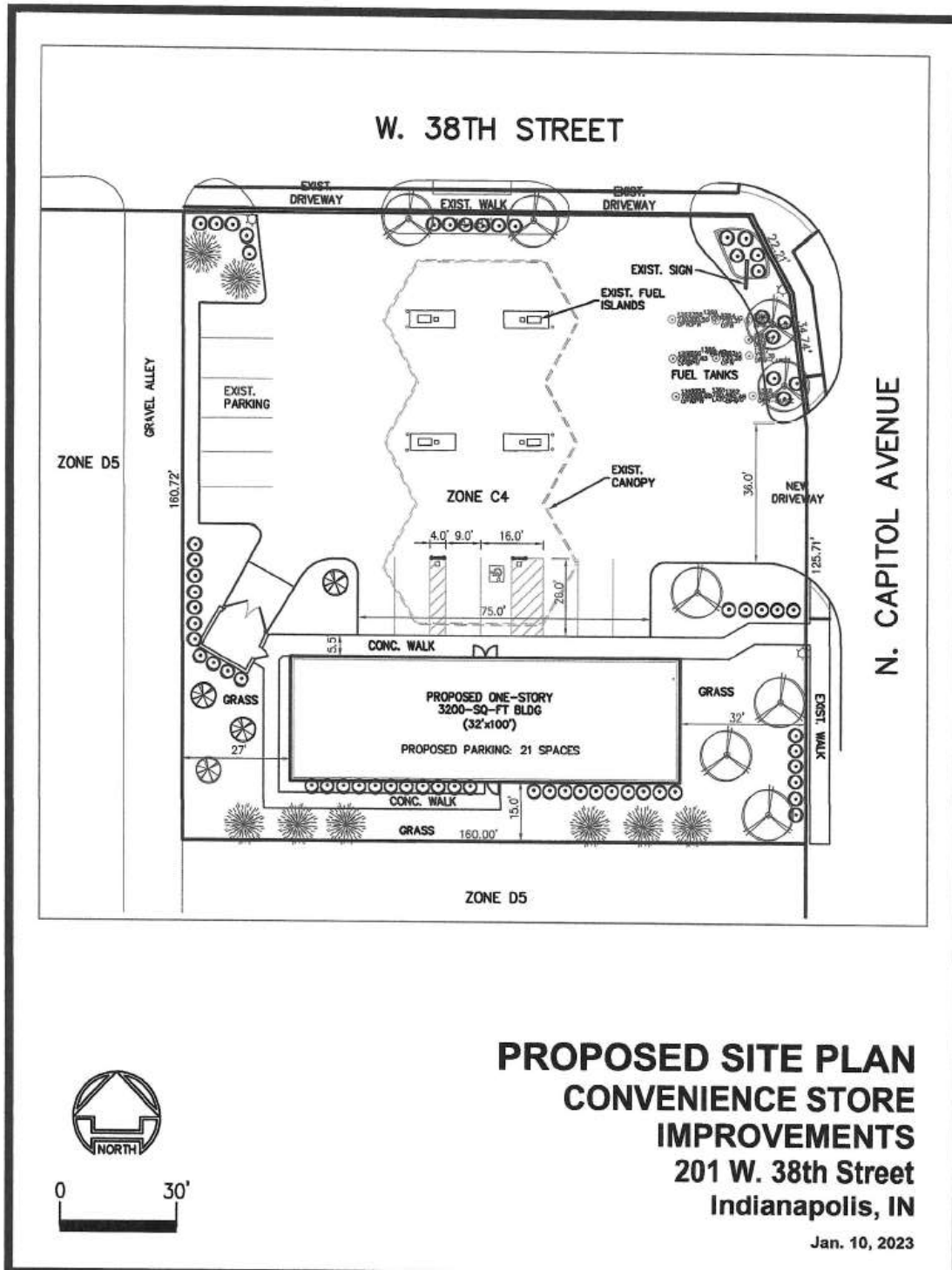
**2023-UV1-006; Location Map**



**2023-UV1-006; Aerial Map**



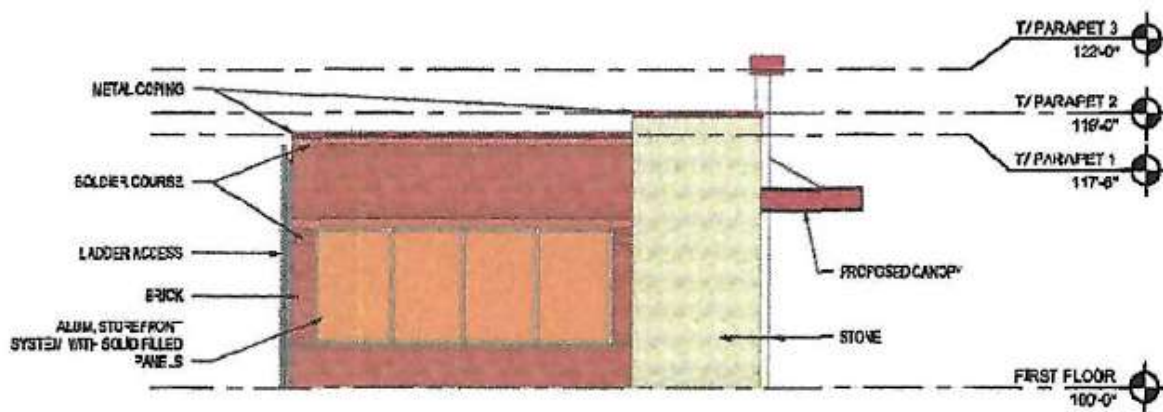




2023-UV1-006; Elevations



**5 EXTERIOR VIEW**  
 SCALE: NTS

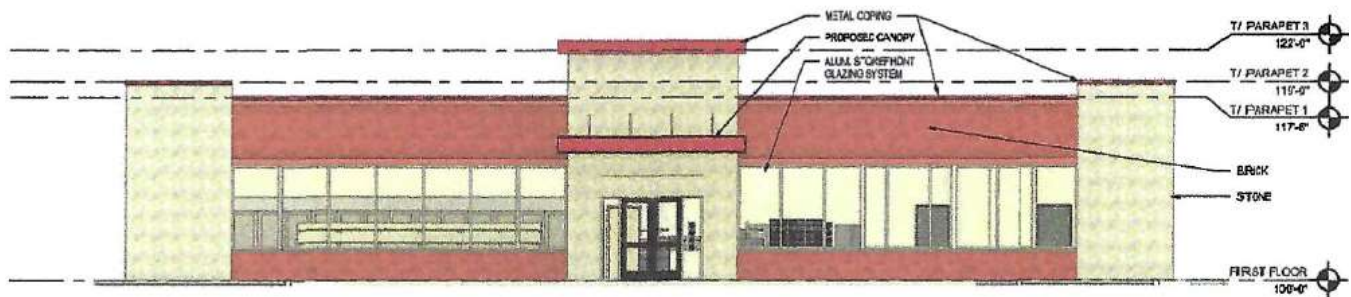


**3 EAST ELEVATION**  
 SCALE: 1/8" = 1'-0"

**2023-UV1-006; Elevations (Continued)**

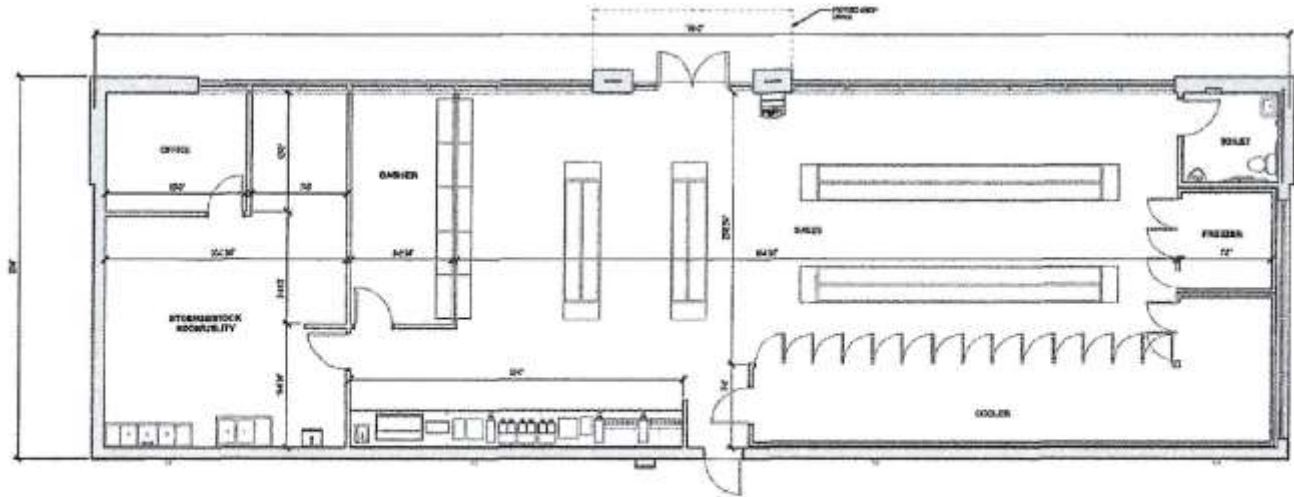


**4 EXTERIOR VIEW**  
 SCALE: NIS



**2 NORTH ELEVATION**  
 SCALE: 1/8" = 1'-0"

**2023-UV1-006; Floor Plan**



SP1006 1  
**FLOOR PLAN**  
 SCALE: 3/16" = 1'-0"

**2023-UV1-006; Plan of Operation**

**PLAN OF OPERATIONS**

The Petitioner plans to have the subject property continue with its operation as an existing retail gas station. The convenience store will be expanded with the additional space to be used for additional inventory as depicted and described in the site plan, floor plan and renderings submitted simultaneously herewith. If the Variance is granted, Petitioner will hire additional employees for a total of approximately six employees. Petitioner is willing to make a commitment to hire individuals from the local community, as well as any other commitments reasonably requested by Staff or any relevant third party.



**2023-UV1-006; Findings of Fact**

**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 property is already a retail gas station along a busy street with similar properties adjacent thereto, there will be sufficient buffer to the residential properties to the south, and the property will be more aesthetically pleasing.

**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**

granting the variance will increase the value of the subject property and the adjacent properties because the property will be redeveloped with a new and improved building instead of the old, dilapidated building currently on the property.

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

a portion of the property is C-4 and a portion of the property is D-5, and the property was developed as a gas station when convenience stores mainly sold tobacco products instead of now when the convenience stores sell groceries which require a building with much larger square footage in order store and display the products.

**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 subject property has two zoning classifications thereby unduly restricting the ability to expand the convenience store which is necessary for the petitioner to update the building to match the times and allow petitioner to sell the same inventory being offered by petitioner's competitors instead of going out of business.

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

the use would still be the same, retail gas station, which is compatible with Village Mixed Use.

**2023-UV1-006; Photos**



Subject site and street frontage along 38<sup>th</sup> Street looking east.



Western property boundary abutting an alley.





Existing southern property boundary and undeveloped residential lot to be included in the site.



Proposed location of the new convenience store abutting single-family dwellings to the south.





Street frontage along Capitol Avenue looking south.



Undeveloped residential lot to be included in the project development.





Commercial and residential uses east of the site.



Commercial use north of the site.



Commercial use west of the site.