

BOARD OF ZONING APPEALS DIVISION II

December 9, 2025

Case Number: 2025-UV2-013

Property Address: 148 West 38th Street (*approximate address*)

Location: Washington Township, Council District #7

Petitioner: Martin Petroleum Inc., by Jamilah Mintze

Current Zoning: C-4

Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of an automobile fueling station within 1,555 feet of a transit station (1/2-mile separation required) and a convenience store with a one and a half-foot eastern transitional yard and a service area with a zero-foot eastern transitional yard (eight-foot transitional yard required) with deficient frontage and transitional yard landscaping.

Current Land Use: Commercial

Staff

Recommendations: Staff recommends **denial** of this petition.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

11/18/25: A timely automatic continuance request was filed by the petitioner, automatically continuing this petition to the December 9th hearing of Division II.

10/14/25: A timely automatic continuance request was filed by a registered neighborhood organization, automatically continuing this petition to the November 18th hearing of Division II.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- 148 W 38th Street is a 0.33-acre commercial parcel at the northeast corner of the intersection of 38th Street and North Capitol Avenue that is currently developed with a tire shop built in 1965. The current structure is placed on the northeast corner of the site with setbacks that would not conform with current ordinance, as well as parking areas within the front yards along 38th and Capitol. Surrounding land uses include a liquor store to the south, another tire shop to the west, a fueling station to the southwest, a restaurant and undeveloped residential parcel to the east, and what appears to be a single-family residence to the north. The parcel is also 1,555 feet to the west of an existing Red/Purple Line BRT stop (the 38th and Meridian Street stop).

- Approval of this petition would allow for the demolition of the existing building and the construction of a new 2500-square-foot convenience store and fueling station use at the site. Submitted plans indicate six (6) fuel pumps under a canopy as well as underground storage tanks, changes to the existing parking layout, and more clearly defined curb cuts for driveways.
- Several variances would be required to allow for the proposed use and layout: **(a)** the proposed fueling station use would be prohibited since it is located within one half-mile of a transit station (existing 38th and Meridian BRT stop); **(b)** the new building and service area would establish eastern transitional yard setbacks of 1.5 feet and 0 feet respectively when eight (8) feet is the requirement; and **(c)** deficient landscaping along both the 38th and Capitol frontages as well as deficient transitional yard landscaping for the portions of the site bordering a D-5 zoning district.
- Staff would note that this property does *not* fall within the Transit-Oriented Development Secondary Zoning Layer, since it is more than 1000 linear feet away from the closest BRT stop. The proximity rule referenced above is a general use-specific standard applicable for fueling station uses throughout the county that has been in place since 2016. However, the property *does* fall within the Transit-Oriented Development Overlay as defined by the Pattern Book of the Comprehensive Plan, and guidance from the Red and Purple Line TOD Strategic Plans would also be relevant for the site and proposed development given its proximity to the 38th and Meridian BRT stop.
- Building elevations and landscaping plans were not provided for staff's review prior to publication of this report. The variance related to frontage and transitional yard landscaping was added to the request language given this lack of information, and approval of this variance would not allow for deviations from ordinance standards beyond those specified within the request. Staff would also note that the property to the north of the site is zoned C-3 but appears to be used residentially, and that if this zoning matched the land use there would be an enforceable transitional yard. Additionally, redevelopment of the site would need to involve proper closure of existing driveways with new curbing and ADA-compliant sidewalks with less than 2% cross slope (it is unclear from the provided site plan if this would be the case, but it would be a requirement for permit issuance).
- This property is zoned C-4 (Community-Regional District) to allow 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 Comprehensive Plan recommends it to the Village Mixed-Use typology to create compact and walkable neighborhood centers that feature a mix of small businesses and housing types. In this typology, parking areas should be in rear yards, and pedestrian-scale amenities such as lighting, landscaping, and sidewalk furniture should contribute to a walkable environment. Automotive uses such as fueling stations and automobile repair are explicitly excluded as recommended land uses within this typology. In addition to this primary recommendation, the Pattern Book places this site within a TOD overlay designed for areas within walking distance of a rapid transit station where the promotion of pedestrian connectivity is desired.

- Although the site does not fall within the Primary Focus Areas designated by the Red Line and Purple Line TOD Strategic Plans, it would fall within a Secondary Focus Area given that it is within a half-mile of a transit station. These strategic plans recommend that car-only uses be discouraged given that they are not likely to contribute to the pedestrian environment, and that development should have active ground floors along sidewalks with parking areas in the rear yard. Areas near the 38th and Meridian BRT stop are recommended to the District Center TOD typology, which contemplates walkable areas of multiple city blocks with an emphasis on walkable businesses and mixed-use development nearest the station and attached or detached single family uses beyond. Staff does not feel that the use or layout as proposed comport with guidance from either the Land Use Plan Pattern Book or the TOD Strategic Plans.
- Findings of Fact provided by the applicant indicate that the proposed convenience store would utilize a similar setback to the current tire shop building and that the subject site does not directly front on a BRT transit route and therefore would be an appropriate candidate for automobile uses. Staff would note that destruction of the currently existing building would forfeit any legally non-conforming status related to setbacks, and that Ordinance regulations and Plan guidance would be applicable for areas in the immediate vicinity of transit lines as well as direct adjoiners.
- Although the subject site only comprises of one-third of an acre, the full demolition and removal of the existing structure would allow for a greater level of flexibility in redesigning this site in a manner that would comply with relevant setback standards. In addition to the 8-foot eastern transitional yard setback for which a variance would be required, a 10-foot setback would typically be required from the residential lot to the north if the current land use matched the zoning.
- It appears that a primary reason for this encroachment into the required setback would be to facilitate placement of the canopy and 6 fueling pumps related to a prohibited use, and that removal of those pumps would avoid overdevelopment of the site. This could also allow for compliant setbacks and a primary building located closer to street frontages and with greater pedestrian activation or landscaping as contemplated by the Village Mixed-Use typology and TOD overlay. Staff recommends denial of the requested Variances of Development Standards.
- With regards to the use variance request, staff does not feel that undue hardship has been established to justify grant of the variance: the C-4 zoning designation allows for dozens of uses to be established by-right (including convenience store uses), and nothing inherent to the site would preclude the establishment of any number of those C-4 uses. Additionally, the proposed use runs directly counter to relevant guidance from multiple aspects of the Comprehensive Plan that envision areas near BRT lines to be developed with walkable and pedestrian-oriented uses. Staff would also point out that while tire shops, auto repair and fueling stations are all auto-oriented uses, a fueling station is a more intense use. As no appointments for service are required, it is reasonable to assume that traffic generation will be significantly higher. The petitioner did not specify business hours within their plan of operation, so it is feasible that the activity and traffic will occur on-site 24 hours a day. Staff recommends denial of the requested Variance of Use.

GENERAL INFORMATION

Existing Zoning	C-4	
Existing Land Use	Commercial	
Comprehensive Plan	Village Mixed-Use	
Surrounding Context	<u>Zoning</u>	Surrounding Context
North:	C-3	North: Residential
South:	C-4	South: Commercial
East:	C-3 / D-5	East: Commercial / Undeveloped
West:	C-3	West: Commercial
Thoroughfare Plan		
38 th Street	Primary Arterial	100-foot existing right-of-way and 114-foot proposed right-of-way
N Capitol Avenue	Secondary Arterial	60-foot existing right-of-way and 56-foot proposed right-of-way
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	Yes	
Wellfield Protection Area	No	
Site Plan	08/18/2025	
Site Plan (Amended)	09/16/2025	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	08/13/2025	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Red Line & Purple Line Transit-Oriented Development Strategic Plans

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Village Mixed-Use typology to create neighborhood gathering places with a wide range of small businesses, housing types, and public facilities. Businesses found in this typology serve adjacent neighborhoods rather than the wider community and is typified by compact and walkable development with parking at the rear of buildings. Pedestrian-scale amenities such as lighting, landscaping, and sidewalk furniture

also contribute to a walkable environment. Although small-scale retailing and professional services are a contemplated land use for this typology, automotive uses (such as gas stations and auto repair) and uses with drive-through lanes are explicitly excluded from that recommendation.

- The site also falls within a Transit-Oriented Development (TOD) overlay intended for areas within walking distance of a rapid transit station. The purpose of this overlay is to promote pedestrian connectivity and a higher density than the surrounding area.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- The Red and Purple Line TOD Strategic Plans recommends areas near the 38th and Meridian BRT stop to the District Center TOD typology to allow for walkable areas of multiple city blocks, with a mix of office, retail, entertainment, and residential uses with higher densities closest to the station. Off-street parking is discouraged and should be limited to garages visually separate from the street.

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

2013CVR814, 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 (a) with a canopy with a 64.42-foot setback from the centerline of Capitol Avenue (70-foot setback from centerline required); (b) with a parking area with a zero-foot setback from Capitol Avenue (10-foot front setback required); (c) 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); (d) with carryout food service within 10 feet of a D-5 zoned protected district (100-foot separation required), **withdrawn**.

2013CZN814, Rezoning of 0.33 acre from the C-4 district to the C-3 classification to provide for a convenience store / gasoline station, **withdrawn**.

89-UV3-96, variance of use and development standards of the Commercial Zoning Ordinance and the Sign Regulations to provide for a drive-thru restaurant within one hundred feet of a residential zoning district and a sign within the required setback, **denied**.

ZONING HISTORY – VICINITY

2023CVR830 ; 201 W 38th Street (southwest of site), 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), **approved**.

2023CZN830 ; 208 W 38th Street (southwest of site), Rezoning of 0.44 acre from the D-5 and C-4 districts to the C-4 district, **approved**.

2020CVR821 ; 111 W 38th Street (southeast of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a carwash with stacking spaces in the front yard of Illinois Street, 38th Street and Kenwood Avenue (not permitted along street 30 feet in width or greater), 35 feet from a protected district, with an 80-foot front setback from 38th Street and with a 55-foot exit drive lane (100-foot separation requirement, maximum 65-foot front setback and 100-foot exit drive required), **approved**.

2018UV3026 ; 227 W 38th Street (southwest of site), Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for an automobile repair facility (not permitted), **approved**.

2013UV1038 ; 202 W 38th Street (west 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**.



Department of Metropolitan Development
Division of Planning
Current Planning

2005DV1059 ; 3802 N Kenwood Avenue (east of site), legally establish a 2,070-square foot carryout restaurant located zero feet from a protected district (minimum 100-foot separation from a protected district required), with a four-foot front landscape strip along 38th Street and without a landscape strip along Kenwood Avenue (minimum twenty-foot front landscape strip along 38th Street and ten-foot front landscape strip along Kenwood Avenue required), with a zero-foot north side transitional yard (minimum twenty-foot side transitional yard required), **denied**.

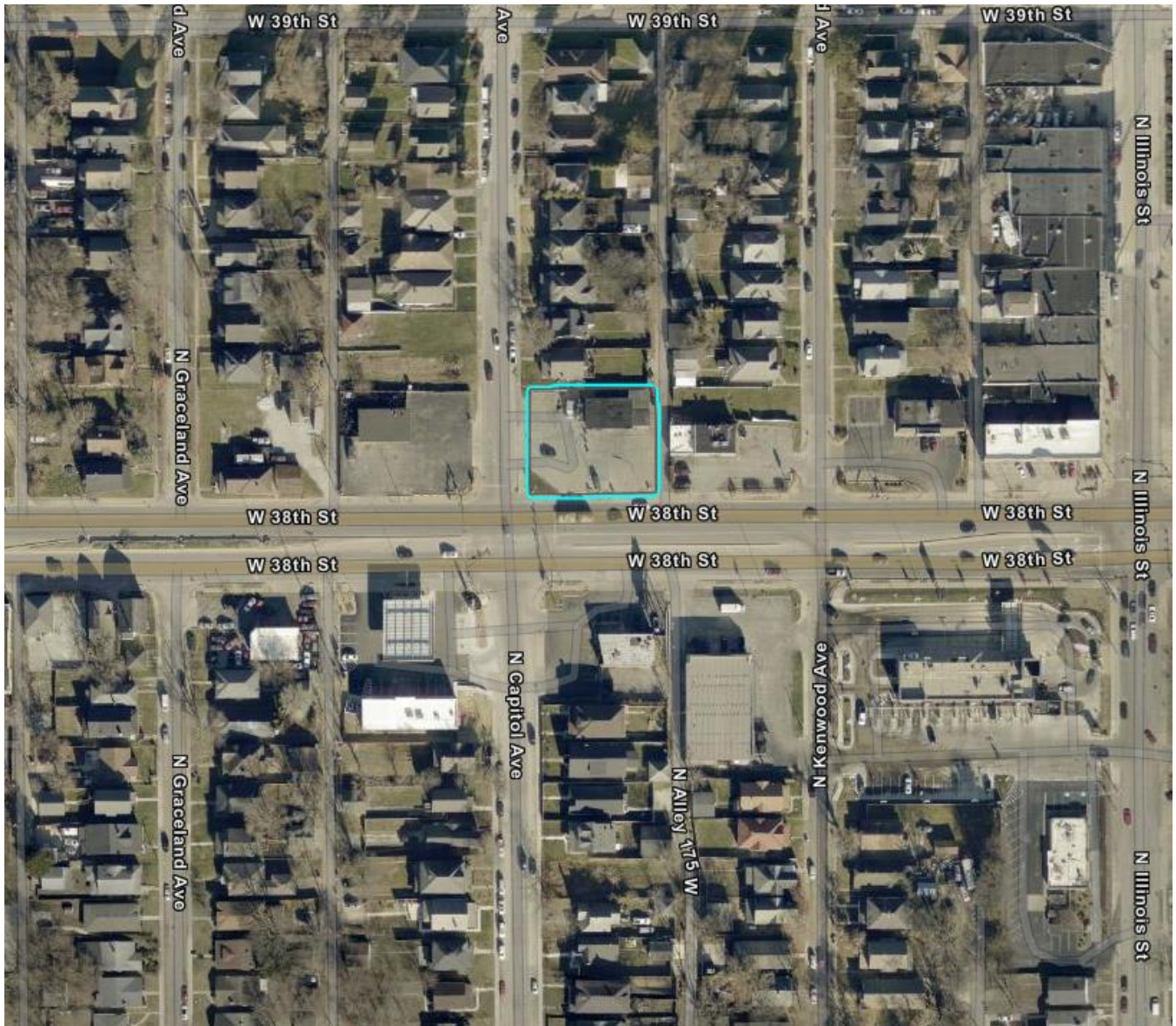
2003ZON069 ; 3816 N Kenwood Avenue (east of site), rezoning of 0.2 acre, being in the D-5 district, to the C-3 classification to provide for a commercial parking lot, **denied**.

2003HOV022 ; 3816 N Kenwood Avenue (east of site), variance of development standards of the Commercial Zoning Ordinance to provide for an eleven-foot north transitional yard for a restaurant parking lot (minimum 20-foot transitional yard require when abutting a protected district), **approved**.

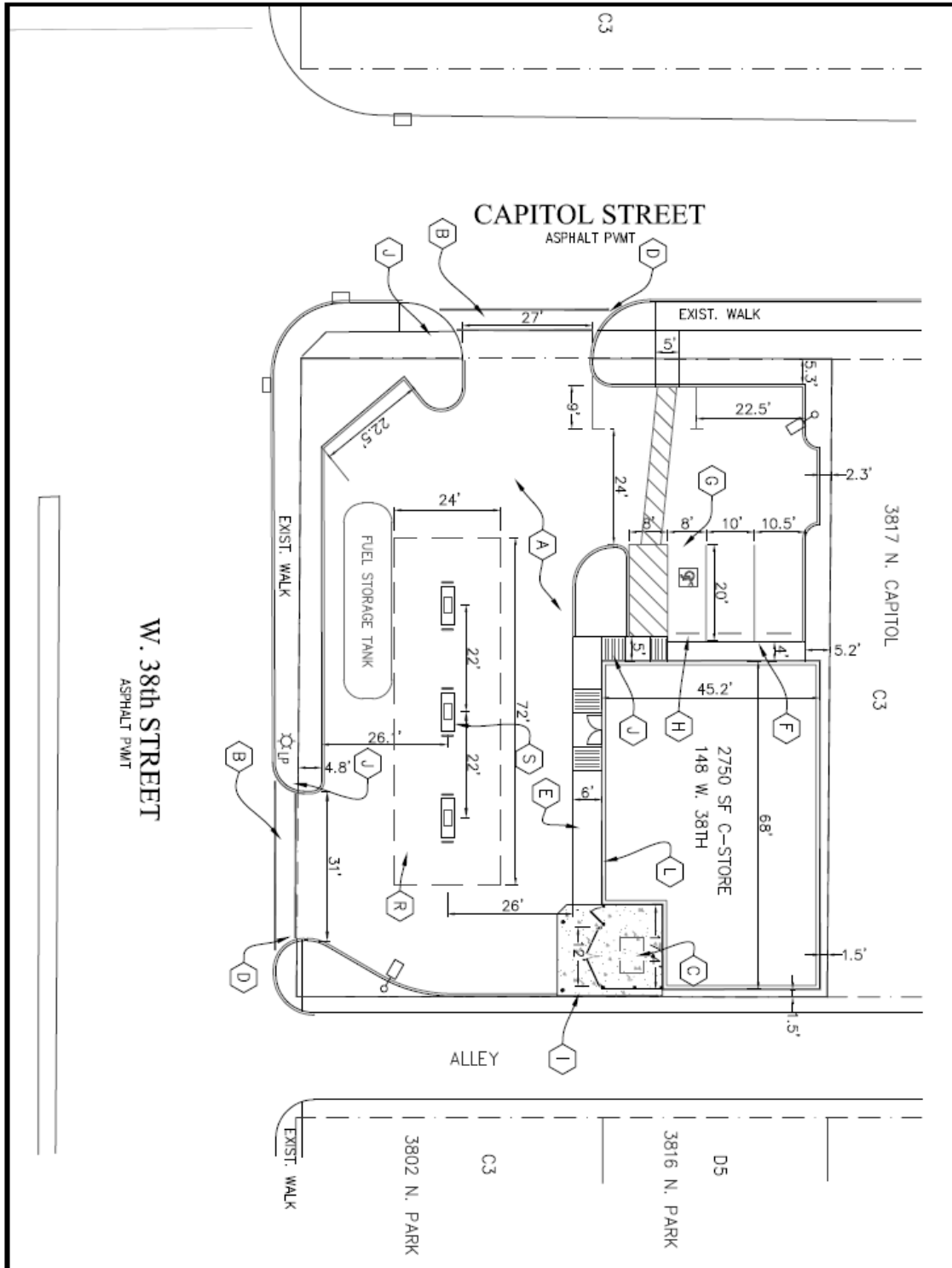
93-UV2-23 ; 217 W 38th Street (southwest of site), variance of use of the Dwelling Districts Zoning Ordinance to provide for the continued operation of an automobile repair shop, **approved**.

EXHIBITS

2025UV2013 ; Aerial Map



2025UV2013 ; Site Plan



2025UV2013 ; Plan of Operation (partial selections)

I. EXECUTIVE SUMMARY

This Development Plan of Operations outlines the comprehensive strategy for the development, construction, and operation of a six pump diesel gas station facility. The proposed development will serve commercial and retail customers with diesel fuel dispensing capabilities, convenience retail services, and ancillary automotive services.

II. PROJECT DESCRIPTION

Facility Specifications:

- Six (6) diesel fuel dispensing pumps
- Retail convenience store (approximately 2,500 square feet)
- Canopy structure covering fuel dispensing area
- Underground storage tanks (USTs) with appropriate capacity
- Vehicle service bay (optional)
- Customer parking and truck maneuvering areas

A. Fuel Operations

Fuel Delivery: Scheduled fuel deliveries with proper safety protocols

Quality Control: Regular fuel quality testing and monitoring

Inventory Management: Automated tank gauging and inventory tracking systems

Dispensing Operations: Customer service protocols and payment processing

A. Organizational Structure

General Manager: Overall operations oversight

Assistant Manager: Daily operations and customer service

Fuel Attendants: Customer service and facility maintenance

Maintenance Personnel: Equipment servicing and repairs

IB. Operational Hours

Standard Hours: [To be determined based on market analysis]

Staffing Coverage: Adequate personnel for safe operations during all hours

2025UV2013 ; Findings of Fact (Use)

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

The subject property does not have frontage on an existing or planned transit line or transit station and, as such, will not conflict with pedestrian traffic choosing bus transit.

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

None of the adjoining properties front on an existing or planned transit line or transit station and, absent that, the use is permitted in the existing C-4 zoning district.

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

The property has traditionally been used for auto-oriented uses and is located on a primary thoroughfare.

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 property, although within one half mile of a transit station, is two streets removed from the nearest transit station.

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

The: (a) existing improvements, (b) curb cuts, (c) historic use of the property, and (d) presence along a primary thoroughfare all indicate that automobile-related uses are appropriate, despite the Village-Mixed designation.

2025UV2013 ; Findings of Fact (Development Standards)

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

The building triggering the setback variance exists today and does not interfere with any line of sight at the intersection of 38th Street and Capitol Avenue. Furthermore, the site has been previously developed without significant landscaping; any additional landscaping provided by the Petitioner only helps the public health, safety and general welfare.

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

The setback issues exist today and are not being exacerbated and, therefore, there will be no new impact on adjoining properties. Any additional landscaping supports the use and value of adjoining properties.

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

The change in use triggers new requirements in circumstances where new improvements are made to small lots with historic non-conforming structures, which, if reused, would remain as legal non-conforming structures. The Subject Property was developed long before current landscaping standards were adopted, making it extremely difficult to meet current standards, even with a redevelopment.

2025UV2013 ; Photographs



Photo 1: Subject Site Viewed from Southwest (September 2024)



Photo 2: Subject Site & Eastern Alley Viewed from Southeast

2025UV2013 ; Photographs (continued)



Photo 3: Current Building Viewed from East (June 2024)



Photo 4: Adjacent Undeveloped Residential Lot to East (June 2024)

2025UV2013 ; Photographs (continued)



Photo 5: Adjacent Property to East (Viewed from South)



Photo 6: Adjacent Property to South

2025UV2013 ; Photographs (continued)



Photo 7: Adjacent Property to Southwest



Photo 8: Adjacent Property to West

2025UV2013 ; Photographs (continued)



Photo 9: Adjacent Property to Northwest



Photo 10: Adjacent Property to North