

BOARD OF ZONING APPEALS DIVISION III

December 17, 2024

Case Number: 2024DV3037

Property Address: 1625 Shelby Street (*approximate address*)

Location: Center Township, Council District #18

Petitioner: Jugaad LLC, by David Retherford

Current Zoning: C-3 (TOD)

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a convenience store with a front building line width ratio of 10.64 (80 percent required) and deficient transparency along Shelby Street (40 percent required), and with parking spaces within 17 feet of Pleasant Run Parkway (25-foot setback required) and deficient landscaping.

Current Land Use: Vacant Commercial

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

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- 1625 Shelby Street is a triangular lot which has historically contained a fueling station use that was initially constructed between 1972 and 1978. The property contained two fuel canopies, three accessory structures, a pole sign, and four existing curb cuts. In late 2023 or early 2024, the fueling station use ceased operations and the accessory buildings were demolished without issuance of a wrecking permit (which resulted in the violation case VIO24-001821 being opened); fuel pumps and two canopies remain at the site. Surrounding land uses and improvements include the I-65 interstate to the east, the Pleasant Run Creek and greenway to the south, a fueling station and retail uses to the southwest, and a thrift store use to the northwest. The site is located near the Fountain Square neighborhood to the north.

- A Red Line BRT bus stop exists at the intersection of Shelby Street and Pleasant Run Parkway SDR to the south of the property, and there is approximately 485 feet separating the edge of the transit station from the edge of this parcel. Given this proximity, TOD restrictions on uses and development standards would apply. The addition of any new or relocated fuel pumps beyond the three currently existing underneath the remaining canopies would require a variance of use for legal operation. However, since (a) the pumps and canopies predate ordinance rules disallowing fueling station uses within C-3 zoning and the TOD overlay, and (b) the zoning ordinance allows for five years of vacancy before a nonconforming use would be considered discontinued (740-603), no use variance would be required for the addition of a new convenience store structure.
- However, the proposed convenience store shown on submitted plans would require multiple variances of development standards related to the TOD overlay guidelines introduced in 2021 to allow for pedestrian-friendly development along activated streetscapes. Required variances relate to: (a) the width of the building as a ratio of the width of the Shelby frontage (80% required and only 10.64% proposed), (b) the percentage of transparent materials comprising the western building façade closest to the Shelby frontage (40% required and 0% proposed), (c) the required setback for parking areas from the Pleasant Run frontage (25 feet required and 17 feet proposed), and (d) deficient landscaping at the site (both width of landscape strip along Shelby and required screening of parking areas from rights-of-way per 744-702.D.3.d of the Ordinance).
- Review of the Improvement Location Permit application for this project was initially conducted earlier this year and noted similar dimensional standards issues. That reviewer also noted issues with light-level standards exceeding maximum allowable limits. Lighting details were not provided for DMD review, and any outstanding issues related to lighting would need to be addressed separately should the petition be approved. Additionally, the number of curb cuts and driveway widths at the site would not meet current standards and, regardless of approved land use, staff would be generally supportive of efforts to close off some of those access points.
- This property is zoned C-3 (Neighborhood Commercial District) to allow for the development of an extensive range of retail sales and personal/professional services with accessibility for all modes of travel being provided and maintained. This zoning district previously allowed for the placement of fueling stations by-right but this is no longer a permitted use. The Pattern Book recommends this site to the Village Mixed-Use typology to allow for neighborhood gathering places with a wide range of small businesses, housing types, and public facilities. Development in this typology should be compact and walkable with parking at the rear of buildings, entrances and large windows facing streetways, and with pedestrian-scale amenities such as landscaping contributing to the walkable environment. Mixed-use structures are preferred, and automotive uses (such as gas stations and auto repair) are not a contemplated land use. Similarly, the Red Line TOD Plan envisions mixed-use commercial nodes placed near BRT stops and discourages both automotive uses and parking within surface lots near stations.

- Findings of Fact submitted by the applicant indicate that the primary hardships preventing them from full ordinance compliance are the unusual parcel shape and the existing fuel canopies limiting options for placement of buildings on the site. Staff would note that the legally non-conforming pumps and canopies are not required to be placed at the site, and that their existence would not constitute a site-specific practical difficulty. Additionally, their removal could facilitate development of a convenience store that conforms much more closely with TOD requirements for building placement/width and parking similar to the recent pedestrian-oriented development to the northwest of the site (see Photo 6 within Exhibits).
- In addition to the close proximity between this site and the Pleasant Run Red Line stop, staff would note that this property sits between the Pleasant Run Greenway to the south and the Fountain Square station to the north (which has direct access to the Cultural Trail and a Pacers Bikeshare kiosk) and is bordered by a protected bike lane to the west. Given the high visibility of this area and proximity to several multi-modal travel options, staff contends that development and land uses should maximize the potential offered by the TOD overlay by meeting ordinance and Plan guidance as closely as possible. The proposed use of a convenience store is not incongruous with this vision, but the proposed building layout offers zero pedestrian activation along the Shelby frontage through a building width that is around one-eighth of ordinance requirements and a building façade with no windows or architectural features.
- Since the presence of multiple fueling canopies is neither required by the property's primary and secondary zonings nor a prerequisite for the successful operation of a convenience store, staff does not feel that their existence constitutes a site-specific practical difficulty. Their presence (and related fueling station use) would not be permitted by current ordinance standards and constitutes a direct impediment to development of the property in a manner compliant with ordinance and Plan guidance that envisions a vibrant and pedestrian-friendly streetscape. Removal of one or more of the canopies could allow for placement of a building that comprises a much larger portion of the Shelby frontage with additional windows and pedestrian features (and fewer extraneous curb cuts). Additionally, it could allow for reconfiguration of the proposed parking area further from property lines and for the installation of the required landscaping strip along Shelby. Staff feels that even accounting for the irregular lot shape, the proposed layout deviates substantially from both compliance and intent of relevant guidelines and recommends denial of the variances.



GENERAL INFORMATION

Existing Zoning	C-3 (TOD)		
Existing Land Use	Vacant Commercial		
Comprehensive Plan	Village Mixed-Use		
Surrounding Context	<u>Zoning</u>	Surrounding Context	
	North:	C-3	North: Interstate
	South:	PK-1	South: Pleasant Run Creek
	East:	C-3	East: Interstate
	West:	C-3 / I-3	West: Commercial
Thoroughfare Plan			
Shelby Street	Primary Arterial	62-foot existing right-of-way and 56-foot proposed right-of-way	
Pleasant Run Pkwy NDR	Primary Collector	90-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	11/21/2024		
Site Plan (Amended)	N/A		
Elevations	11/21/2024		
Elevations (Amended)	N/A		
Landscape Plan	11/21/2024		
Findings of Fact	11/21/2024		
Findings of Fact (Amended)	N/A		

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

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

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Village Mixed-Use typology to allow for neighborhood gathering places (either in historically small neighborhood centers or newly created ones) with a wide range of small businesses, housing types, and public facilities. Development in this typology should be compact and walkable with parking at the rear of buildings, entrances and large windows facing streetways, and with pedestrian-scale amenities such as landscaping contributing to the walkable environment. Mixed-use structures are preferred, and automotive uses (such as gas stations and auto repair) are not a contemplated land use.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- The Red Line Transit-Oriented Development Strategic Plan recommends this site to the Walkable Neighborhood TOD typology given its proximity to the Pleasant Run Red Line stop. The desired land-use mix for these areas is primary residential but with a commercial node of mixed-use development near transit stops. Off-street parking within surface lots and “car-only uses” are discouraged.

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

N/A

ZONING HISTORY – VICINITY

2018ZON129 ; 1618 Shelby Street (west of site), Rezoning of 0.55 acre from the I-3 district to the C-3 classification, **approved**.

2001VAR830 ; 1638 Shelby Street (southwest of site), variance of development standards of the Commercial Zoning Ordinance to legally establish eleven off-street parking spaces, for the storage of trucks and trailers, located within the side transitional yard (off-street parking not permitted within the side transitional yard), **approved**.

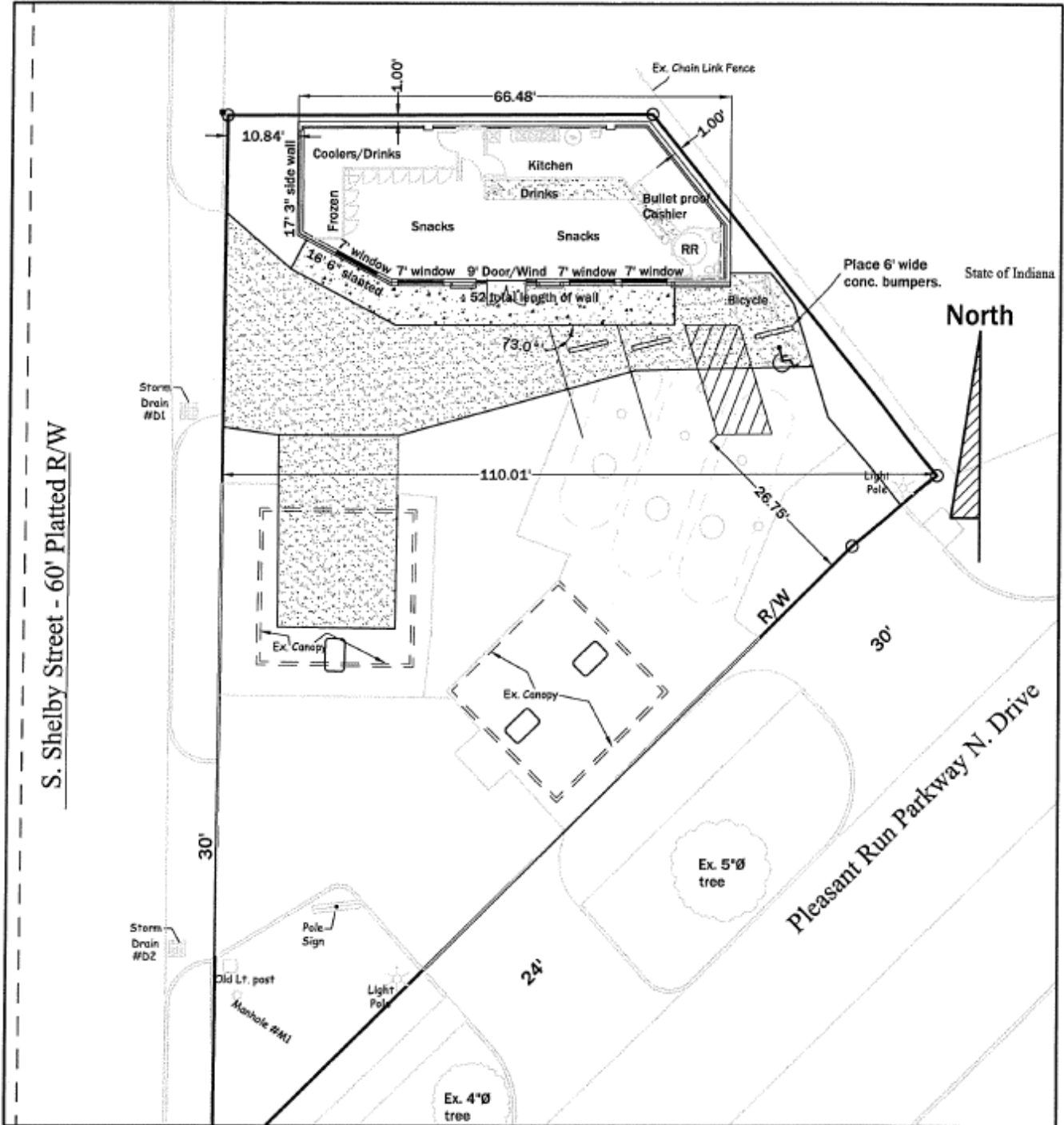
2001ZON830 SW ; 1638 Shelby Street (southwest of site), rezoning of 0.566 acres from the I-3-U district to the C-3 classification, **approved**.

EXHIBITS

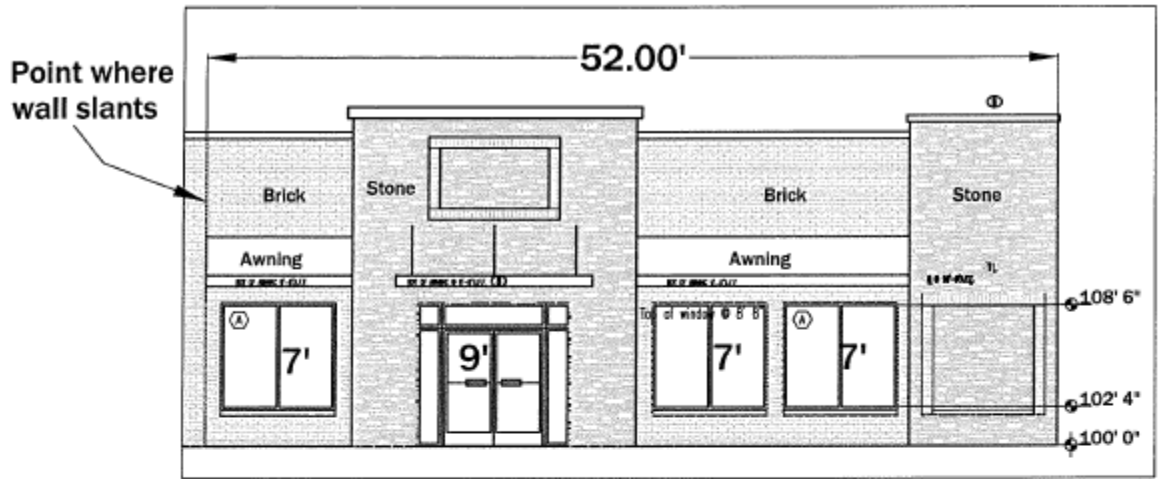
2024DV3037 ; Aerial Map



2024DV3037 ; Site Plan

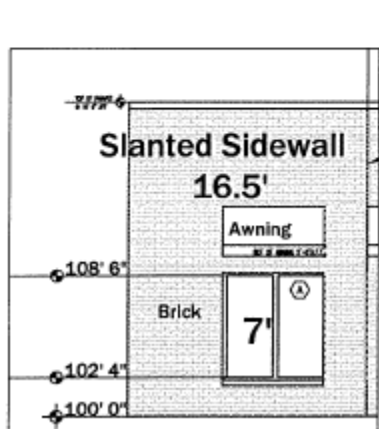


2024DV3037 ; Elevations (South and Southwest)



Front Wall Elevation

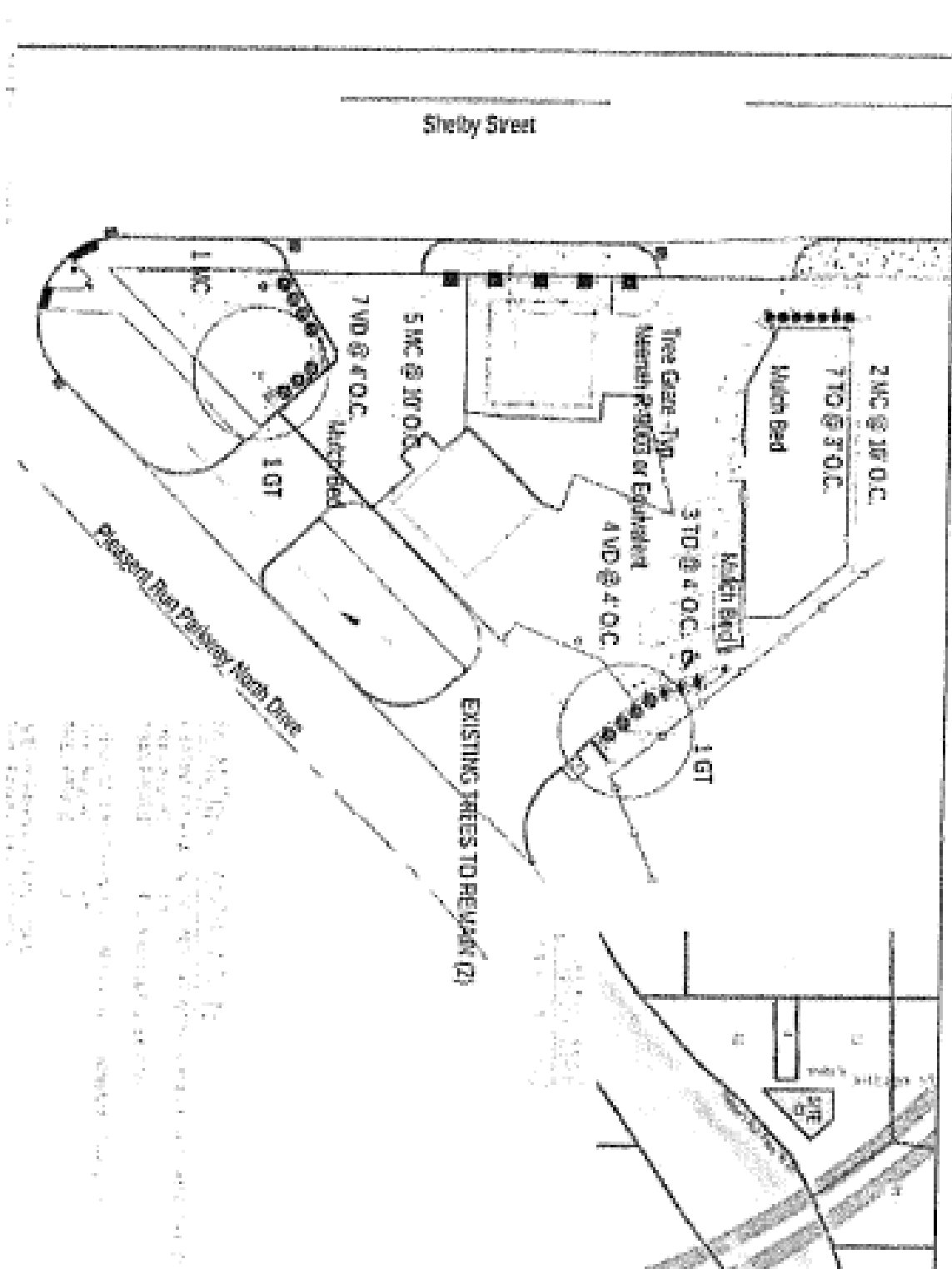
Total length of front wall = 52'. Area between 3' and 8' = $5' \times 52' = 260$ sf. Window area between 3' and 8' = $30' (7' + 7' + 9' + 7') \times 5' = 150$ sf. Percent of transparency = $150 \text{ sf} / 260 \text{ sf} = 58\%$



Slanted Sidewall Elevation

Total length of slanted sidewall = 16.5'. Area between 3' and 8' = $5' \times 16.5' = 82.5$ sf. Window area between 3' and 8' = $7' \times 5' = 35$ sf. Percent of transparency = $35 \text{ sf} / 82.5 \text{ sf} = 42\%$

2024DV3037 ; Landscape Plan



2024DV3037 ; Findings of Fact (Transparency)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: Approving the exterior design of the building with only the front wall and the angled side wall complying with the presumed full first floor transparency standards is not likely to create such injury. The rear walls back up to I-65 and are only 1 foot off the right of way line, and the short East side wall protects the restroom on the inside. The 17' long west side wall does not contain a public entrance. The desired visibility into the building is provided in a reasonable fashion by the front wall containing 58% transparency when the minimum standard is 40%, and the angled side wall is 42% transparent and provides a side view of the cash register. In this case, the cash register location is also located within a transparent bullet proof enclosure for safety.

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 subject property has been developed and utilized continually as a gasoline service station with a small associated store for at least four decades, and the gas station use is not being expanded. The site sits at the intersection of Shelby Street and the sharply angled Pleasant Run North Drive, so it is a very small triangular parcel. The two rear yards of the site abut I-65 to the North and northeast. Across Pleasant Run to the East and Southeast is the heavily wooded Greenways corridor and then South drive, before any residential lots even exist. Across Shelby Street to the West are three properties. Two are zoned C-3. The north parcel contains a commercial building owned by the Archdiocese, and the south parcel contains Nelson's Marathon gas station. The middle parcel appears to contain a residential rental. Permitting the new building to be solid on the back walls and two side walls only, is not likely to negatively impact the use or value of the adjacent properties as compared to requiring these walls to also be transparent.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: Requiring all the walls on the entire first floor to each be at least 40% transparent would eliminate the ability of the building to function as a convenience store, which is the way the property has been used for decades, and is permitted by the C-3 zoning. No coolers, freezers, shelving around the perimeter walls, or even restroom in the corner, could be built if 40% of the abutting wall had to be transparent. This site backs up to I-65 and is on a small triangular lot.

2024DV3037 ; Findings of Fact (Building Width)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: The replacement of the small existing structure with a new convenience store which would comply with the building width requirements if the site was a rectangular site, and only requires a variance because the site is triangular in shape, is not likely to create such injury. The architectural character of the front of the new building, and the associated refreshing of the entire site likely will improve the general welfare of the community as compared to the current condition of the site.

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 subject property has been developed and utilized continually as a gasoline service station with a small associated store for at least four decades, and the gas station use is not being expanded. The site sits at the intersection of Shelby Street and the sharply angled Pleasant Run North Drive, so it is a very small triangular parcel. The two rear yards of the site abut I-65 to the North and northeast. Across Pleasant Run to the East and Southeast is the heavily wooded Greenways corridor and then South drive, before any residential lots even exist. Across Shelby Street to the West are three properties. Two are zoned C-3. The north parcel contains a commercial building owned by the Archdiocese, and the south parcel contains Nelson's Marathon gas station. The middle parcel appears to contain a residential rental. Replacing the existing older building with a new modern convenience store oriented straight South, and also the associated remodeling of this aging site, is more likely to have a positive impact on the use and value of the abutting properties as compared to leaving it as it exists today.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: The .25 acre is small, and it is a generally triangular site with two front yards. The building width minimum contained in the fairly new Front Design Standards cannot be complied with in any fashion without a variance, even if only one of the front yards is used as the measuring stick for the lot width. The only portion on this site that a new building can reasonably be located is at the widest portion at the North end. Because the building width standard is a minimum width as opposed to a maximum, compliance in this unique situation would require a building much wider and larger than the site could accommodate.

2024DV3037 ; Photographs



Photo 1: Subject Site from Southwest



Photo 2: Subject Site from Pleasant Run Pkwy NDR

2024DV3037 ; Photographs (continued)



Photo 3: Subject Site from Shelby Street



Photo 4: Subject Site from West (taken August 2023)

2024DV3037 ; Photographs (continued)



Photo 5: Adjacent Property to the Southwest



Photo 6: Adjacent Property & Bike Plane to the Northwest (September 2024)

2024DV3037 ; Photographs (continued)



Photo 7: Existing Curb Cuts along Shelby Street



Photo 8: Existing Curb Cuts along Pleasant Run Pkwy NDR