

**BOARD OF ZONING APPEALS DIVISION III**

**May 19, 2026**

**Case Number:** 2026-UV3-005  
**Address:** 2525 East 38<sup>th</sup> Street (approximate address)  
**Location:** Center Township, Council District #8  
**Zoning:** C-3 (TOD) (W5)  
**Petitioner:** Garcia's Heating & Cooling INC, by Donald Fisher  
**Request:** Variance of Use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of an HVAC commercial contractor (not permitted), per plans filed.

**Current Land Use:** Undeveloped parcel

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

**PETITION HISTORY**

This petition was continued from the April 21, 2026, Board III hearing due to a lack of quorum, and transferred to the May 19, 2026, hearing of Board II.

**STAFF RECOMMENDATION**

Staff recommends **denial** of this petition.

**PETITION OVERVIEW**

- ◇ The request would provide for the operation of a heating, ventilation, air conditioning commercial contractor which includes 17 staff and the storage of twelve (12) eight commercial vans/box trucks on site, per the plan of operation.
- ◇ Up to four additional retail spaces for neighborhood commercial uses would also be provided. It is indicated these uses would be zoning complaint with the existing C-3 zoning district. No floor plan or tenant space information has been provided for these uses.
- ◇ The Comprehensive Plan recommends community commercial uses for the subject site which recommends low intensity commercial, and office uses that serve nearby neighborhoods. As proposed, this request would not be consistent with the Comprehensive Plan recommendation of community commercial typology. It is contemplated that the C-3 or C-4 districts would be appropriate for community commercial, depending upon the surrounding land uses. The East 38<sup>th</sup> Street corridor has a mix of land uses ranging from residential to industrial. This site is located within an area that is primarily commercial. The use as proposed would be impactful to the area.
- ◇ In addition, residential uses are adjacent to this site to the south. For this reason, staff believes that more intense uses should not be allowed because of the impact on the residential uses. This would include the requested use.

- ◇ The proposed use would be permitted in the C-5, General Commercial Zoning District. The C-5 district is designed to provide areas 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.
- ◇ Given the increase in intensity between the existing zoning and the proposed use, including the number of commercial vehicles as outdoor storage, approval of this request would over-develop the site and facilitate the intrusion of heavy commercial uses into an established neighborhood commercial corridor, adjacent to an existing residential neighborhood. The request would encourage additional heavy commercial encroachment, in a manner violating the development norms and residential aesthetics of the street, and squarely deviating from the recommendations of the Comprehensive Plan.
- ◇ The strict application of the terms of the zoning ordinance does not constitute a practical difficulty for the property, since the site is zoned C-3 and could be used by any number of uses permitted, by right, in the C-3 zoning classification. Any practical difficulty is self-imposed by the desire to use the site for operation of a construction contractor, including the on-site storage of 12 commercial vehicles associated with the use.
- ◇ The subject site is similar to other nearby properties that share the same zoning and parcel size and are able to follow the comprehensive plan and zoning ordinance without the need for variances. Therefore, the Comprehensive Plan recommendation should not be disregarded, nor of the clear neighborhood commercial nature of the surrounding area. For these reasons, staff recommends its denial.

### **Wellfield Protection Secondary Zoning**

- ◇ A wellfield is an area where the surface water seeps into the ground to the aquifer and recharges the wells that are the source of our drinking water. This secondary zoning district places closer scrutiny on uses and activities that might contaminate the underground drinking water supply.
- ◇ There are two wellfield district designations. An area identified as W-1 is a one-year time-of-travel protection area. The W-5 is a five-year time-of-travel protection area. All development within these districts are subject to Commission approval. The filing of a site and development plan is required and subject to approval, on behalf of the Commission, by a Technically Qualified Person (TQP), unless exempted by the Ordinance.
- ◇ “Because of the risk that hazardous materials or objectionable substances pose to groundwater quality, it is recognized that the further regulation of the manufacturing of, handling, transfer, disposal, use or storage of hazardous materials or objectionable substances related to



nonresidential use activities is essential in order to preserve public health and economic vitality with Marion County.”

- ◇ All uses permitted in the applicable primary zoning district shall be those uses permitted in the W-1 and W-5 zoning districts, unless otherwise prohibited by the Ordinance, and provided no other secondary zoning district prohibits the use.
- ◇ “No building, structure, premises, or part thereof shall be altered, constructed, converted, erected, enlarged, extended, modified, or relocated except in conformity with this Section, and not until the proposed Site and Development Plan has been filed with and approved on behalf of the Commission by the Technically Qualified Person (TQP). Regulations found in Chapter 742, Article II, Section 4 shall apply to all land within the Wellfield Protection Zoning Districts. The entire site shall be subject to review by the TQP. These regulations shall be in addition to all other primary and secondary zoning district regulations applicable to such land, and in case of conflict, the more restrictive regulations shall apply.”
- ◇ The subject site is located within the W-5 Fall Creek wellfield protection area and any use or development within a wellfield protection district would be subject to the Technically Qualified Person (TQP) review and approval, unless and until the property owner provides sufficient justification that the type of use, type of facility, and chemical quantity limits, independent of the land use would be exempt from the requirements for filing a development plan. Otherwise, a development plan would be required to be filed and approved on behalf of the Metropolitan Development Commission by the (TQP). Contaminants that would have an adverse effect would include chemicals that are used in the home, business, industry, and agriculture. Chemicals such as furniture strippers, lawn and garden chemicals, cleaning chemical and solvents, gasoline, oil, and road salt can all contaminate groundwater supplies if poured on the ground or improperly used or stored.

**GENERAL INFORMATION**

<b>Existing Zoning</b>	C-3		
<b>Existing Land Use</b>	Undeveloped		
<b>Comprehensive Plan Overlay</b>	Community Commercial TOD, Wellfield		
<b>Surrounding Context</b>		<b>Zoning</b>	<b>Surrounding Context</b>
	North:	C-1	Medical Office
	South:	D-3	Single-Family Dwelling
	East:	C-3	Commercial Gas Station
	West:	C-3	Vacant fast-food restaurant
<b>Thoroughfare Plan</b>			
	East 38 <sup>th</sup> Street	Primary Arterial	74-foot existing right-of-way, 88-foot proposed right-of-way.
	Temple Avenue	Local Street	50-foot existing and proposed right-of-way
<b>Context Area</b>	Compact		
<b>Floodway / Floodway Fringe</b>	N/A		
<b>Wellfield Protection Area</b>	5 Year		
<b>Elevations</b>	N/A		

<b>Landscape Plan</b>	N/A
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<b>Plan of Operation</b>	February 23, 2026
<b>Site Plan</b>	November 18, 2025
<b>Commitments</b>	N/A
<b>Findings of Fact</b>	November 18, 2025

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- The Comprehensive Plan recommends Community Commercial uses.

### Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Community Commercial typology for this site 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

- Purple Line Transit-Oriented Development Strategic Plan (2021).
  - The subject site is located approximately 1,000 feet from the Meadows Drive Purple Line transit station.
  - The Meadows Drive transit station has been categorized as the District Center typology, which is characterized located at the center of regionally significant districts with several blocks of retail or office at their core. Development opportunities include infill, redevelopment, dense residential properties, employment near transit stations, neighborhood retail, and a focus on walkability and placemaking.
- The Purple Line Transit-Oriented Development Strategic Plan TOD recommends District Center Typology Characteristics
- District Center
  - Multiple city blocks servicing as commercial and cultural hub
  - Minimum of 3 stories at core
  - No front or side setbacks at core; 0-10 ft. front setbacks and 0-10 ft. side setbacks at the periphery
  - Multi-family housing with a minimum of 3 units
  - 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

**80-Z-9; 2525-2529 East 38th Street (subject site)**, requested the Rezoning of 0.69 acre being in the D-5 District to the C-3 classification to provide for commercial development, **approved**.

**2007-ZON-132; 2740 East 38th Street (east of site)**, requested the Rezoning of 0.859 acre, being in the D-5 (W-5) District, to the C-4 (W-5) classification to provide for community-regional commercial uses, **approved**.

**2002-ZON-102; 2512 and 2600 East 38th Street (north of site)**, requested the Rezoning of 1.73 acres from the D-5 (W-1) and C-1 (W-1) districts to the C-1 (W-1) classification to provide for a community multi-service center, **approved**.

**2000-ZON-825 / 2000-VAR-825; 2515 and 2521 East 38th Street (west of site)**; requested the Rezoning of 0.69 acre from the D-5 District to the C-3 classification to legally establish a restaurant and to provide for the development of a drive-through restaurant and variance of development standards to provide for a drive-through within 76 feet of a protected district and encroaching 12.25 feet into the west transitional yard, **approved and granted**.

**96-Z-189; 3801 North Temple Avenue (north of site)**, requested the Rezoning of 1.05 acres from the D-5 District to the C-1 classification. **approved**.

**91-Z-114; 2609 East 38th Street (east of site)**, requested the Rezoning of 0.99 acre being in the C-1 District to the C-3 classification to provide for commercial development, **approved**.

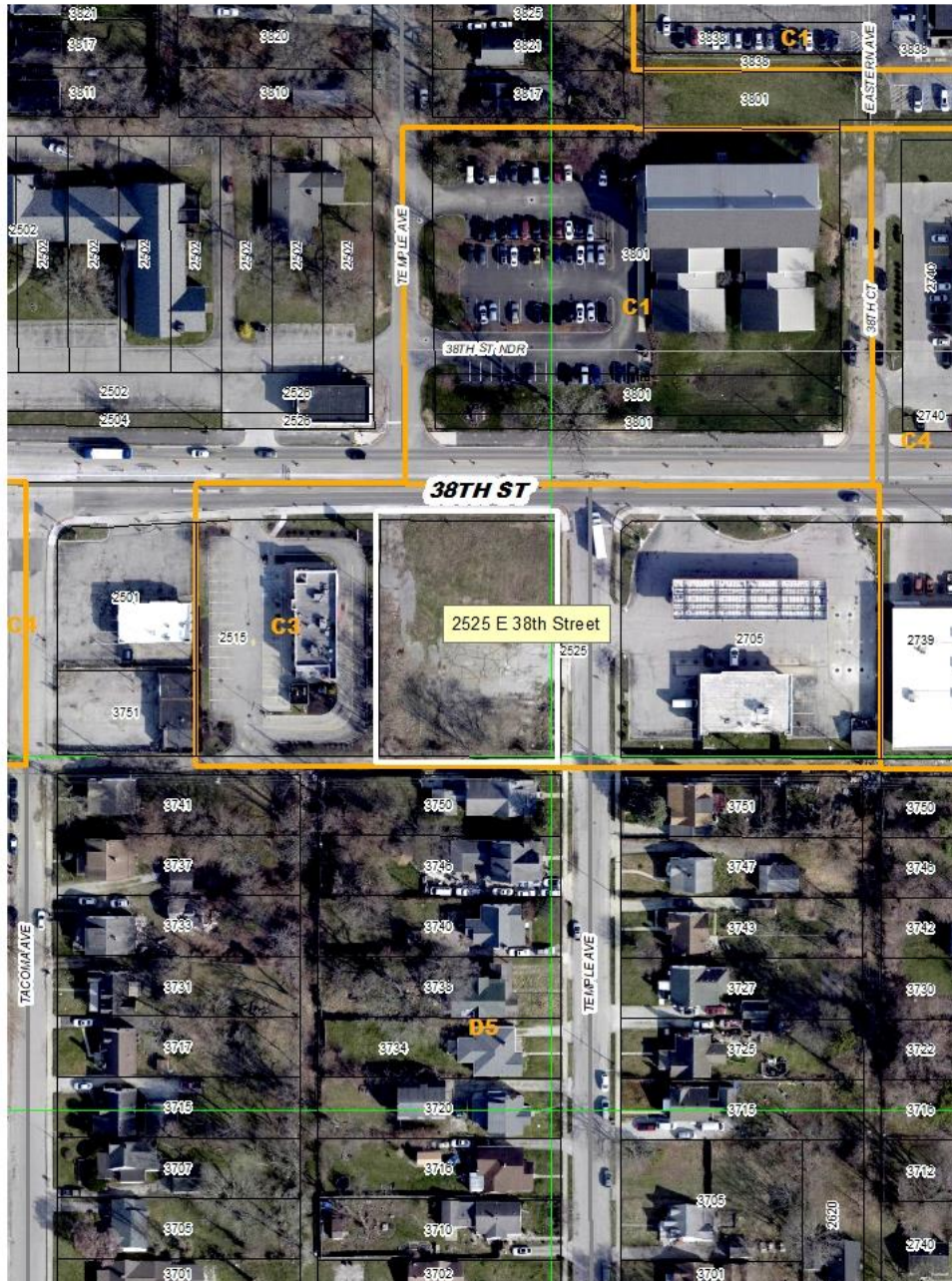
**80-Z-116; 2705 East 38th Street (east of site)**. requested the Rezoning 0.66 acre being in the D-5 District to the C-3 classification to provide for commercial development, **approved**.

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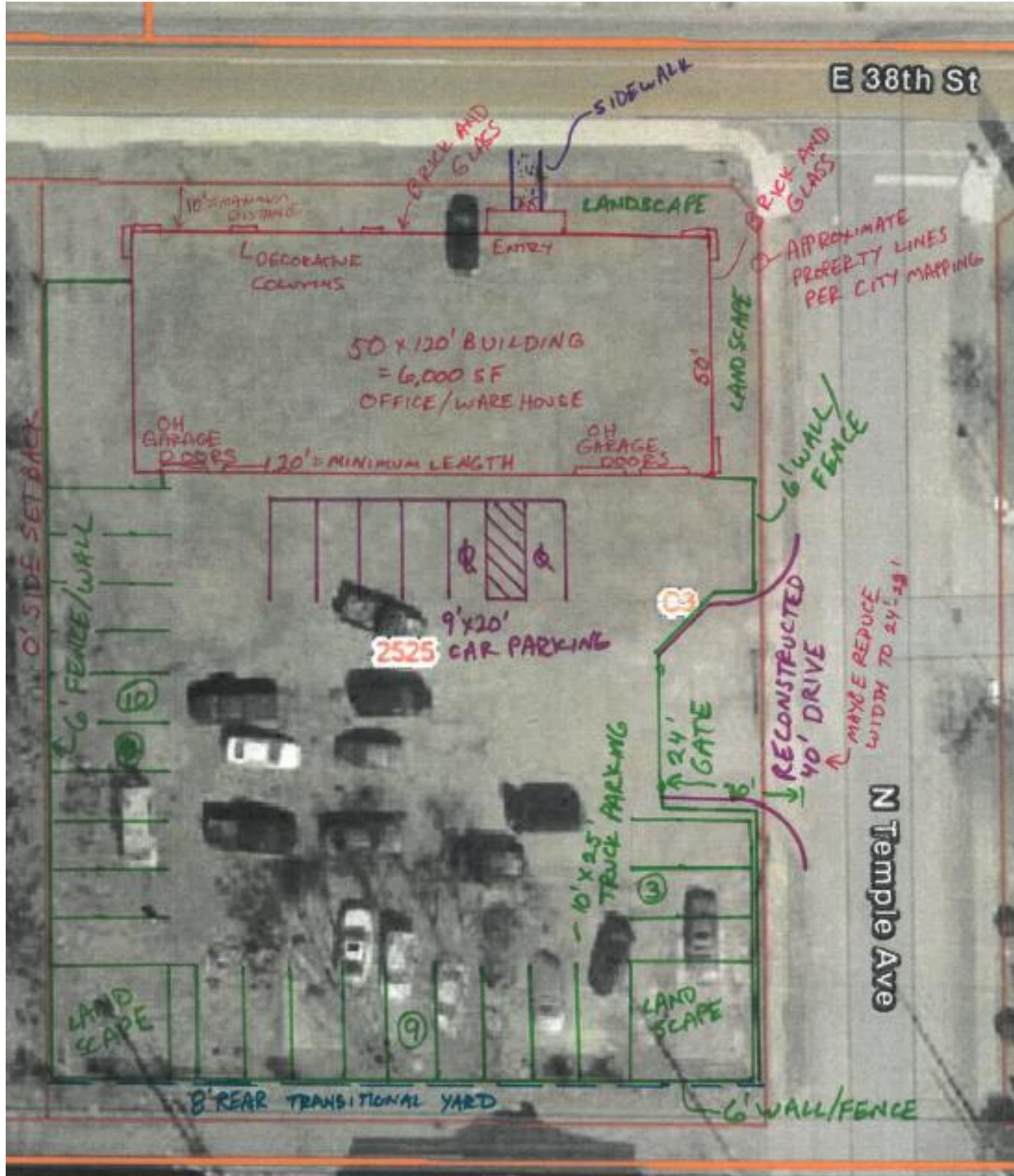
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**EXHIBITS**

**Location Map**



Site Plan



**Plan Of Operation – file dated February 23, 2026**

**Garcia H&C Commercial Center Plan (IEI#2516) 2-23-26**

Garcia H&C proposes to develop a commercial/retail business center located at 2525 East 38<sup>th</sup> Street, Indianapolis, IN. The site is a vacant lot that is zoned C3, Compact Context and is also within the Transit Overlay District. The lot is on the southwest corner of East 38<sup>th</sup> Street and North Temple Avenue.

Garcia proposes to develop/construct a building with approximately 9,100 SF that will provide an office and work/warehouse space for Garcia Heating and Cooling, an HVAC Contractor, as well as up to four additional retail spaces for local/ neighborhood service providers. The retail spaces and the office will face 38<sup>th</sup> Street, the primary street. The storage/small warehouse space within the building will be on the south side of the building. The proposed building will be approximately 70' x 130' and have a flat roof height of about 25 feet, parapets will extend above the roof.

The proposed building will be developed to meet the C3 and TOD required standards for location and appearance. The proposed parking will be on the south side of the building. The parking will be utilized for customer and employee parking. The parking lot will also function as parking for the HVAC service vehicles overnight. Some vehicles may be stored within the building.

It is anticipated that the small retail/office tenants will be primarily focused on local neighborhood services such as insurance agent, accountant, nail salon, hair salon, dentist or a small restaurant.

Garcia Heating and Cooling has two office staff and fifteen service/installation staff using 12 vans/box trucks that are primarily on site at the beginning and end of each day. Deliveries to the site are by box truck. The business hours are 7:00 AM to 5:00 PM.

The business hours for the retail tenants will be dependent on their type of business for example an accountant will generally be on site from about 8:00 AM to 6:00 PM whereas a hair salon hours may be 10:00 AM to 8:00 PM. It is anticipated that each of the tenants will have between one and three employees.

The site is proposed to have a solid wall along the south property line adjacent to the alley, wood privacy fence along the west boundary from the alley to the building along the existing restaurant and either fence or a wall from the alley to the building along the east property line adjoining North Temple Avenue. There will be a gate at the access drive from Temple to the parking area.



**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 PROJECT WILL PROVIDE SERVICES FOR THE NEARBY COMMUNITY IN A FACILITY THAT IS DESIGNED TO THE LATEST DESIGN REQUIREMENTS.

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 BUILDING AND SITE DEVELOPMENT WILL MEET THE DESIGN STANDARDS OF THE COMMERCIAL ZONING AS WELL AS THE STRICTER TOD REQUIREMENTS

3. THE NEED FOR THE VARIANCE ARISES FROM SOME CONDITION PECULIAR TO THE PROPERTY INVOLVED BECAUSE  
THE PROPERTY IS LOCATED ON A PRIMARY THOROUGHFARE ON A COMMERCIAL STREET SURROUNDED BY LONG STANDING ESTABLISHED RESIDENCES OF WHICH THE HEATING AND COOLING SERVICE WILL BE WELL LOCATED. THE NEWLY ADDED TOD PROVIDES ACCESS BUT LIMITS NEEDED SERVICES.

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 PROPOSED BUILDING WILL BE PRIMARILY UTILIZED FOR NEIGHBORHOOD COMMERCIAL SERVICES. THE LOCATION IS IDEAL FOR EMPLOYEE AND CUSTOER ACCESS WITH THE RED LINE BUS SERVICE AT THE SITE. NOT ALLOWING THE HEATING AND COOLING BUSINESS RESULTS IN A MORE DIFFICULT ACCESS TO WORK AND SERVICES.

5. THE GRANT DOES NOT INTERFERE SUBSTANTIALLY WITH THE COMPREHENSIVE PLAN BECAUSE  
PROPOSED BUILDING WILL BE CONTRACTED TO MEET THE INTENDED NEIGHBORHOOD COMMERCIAL WITH SUITES TO BE LEASED FOR SERVICE BUSINESSES OF WHICH ONE IS TO BE THE OFFICE.

**Photographs**



Subject site undeveloped, looking south from East 38<sup>th</sup> Street



Adjacent single family dwelling residential district to the south, looking west.



Adjacent commercial gas station to the east, looking south.



Adjacent vacant commercial restaurant to the west, looking south.