

**BOARD OF ZONING APPEALS DIVISION I**

**July 2, 2024**

**Case Number:** 2024-UV1-007  
**Property Address:** 5075 West 38<sup>th</sup> Street (approximate address)  
**Location:** Wayne Township, Council District #5  
**Petitioner:** Arnid LLC, by David Bayt  
**Current Zoning:** C-5  
**Request:** Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for outdoor storage for vehicles awaiting repair that is equivalent to 231.52 percent of the gross floor area of the primary building (limited to 25 percent).  
**Current Land Use:** Commercial  
**Staff Recommendations:** Staff recommends denial of this petition  
**Staff Reviewer:** Noah Stern, Senior Planner

**PETITION HISTORY**

**ADDENDUM FOR JULY 2, 2024 BZA DIVISION I HEARING**

- This petition was continued from the June 4, 2024 BZA Division I hearing to the July 2, 2024 BZA Division III hearing due to an indecisive vote.

**STAFF RECOMMENDATION**

- Staff recommends denial of this petition

**PETITION OVERVIEW**

- This petition would provide for outdoor storage of vehicles that is equivalent to 231.52 percent of the gross floor area of the primary building (limited to 25 percent).
- During the June 4 hearing, the petitioner formally withdrew the portion of the request regarding vehicles awaiting repair, limiting the scope of this petition to that of outdoor storage of vehicles that are in overflow inventory. Additionally, it came to Staff's attention that the subject site does not provide sufficient transitional yard in between the dwelling district along the southeast portion of the lot and has never been in compliance for this standard. Therefore, unless the petitioner agrees to add the required transitional yard, the petition will need to be continued and renoticed to add that variance.



**Department of Metropolitan Development  
Division of Planning  
Current Planning**

- If the petitioner does agree to add the required transitional yard, Staff continues to recommend denial of the request.
- Staff finds the proposed storage area for vehicles to be a significant deviation from typical and orderly development for the surrounding area, and to be the introduction of a primary use, being heavy outdoor storage, that is not permitted in C-5 zoning districts. The proposal, therefore, constitutes a changing of use, meaning a use variance is required, and all development standards be met. This amount of storage of vehicles represents a high intensity use that puts heightened pressure on the adjacent dwelling district and is characteristic of C-7 zoning districts and not of C-5. Further, the property’s C-5 zoning has historically only allowed outdoor storage that is accessory and subordinate to the primary use. In 2015, Indy Rezone continued and reaffirmed this principle and codified only allowing an area equal to 25% of the size of the primary use for outdoor vehicle storage. Even though this use has been in operation on this site for many years, it is not legally non-conforming and has never been legally established.
- Staff continues to request a landscape plan as an element of this petition, as the site is devoid of essentially any interior or frontage landscaping, in addition to not meeting the required transitional yard. Staff sees this as poor development and substandard to the goals of the Lafayette Square/International Marketplace Area Plan of creating a clean and green environment, creating a more pedestrian-friendly environment, and reducing flooding and runoff.
- Finally, Staff does not find there to be any practical difficulty for needing the use variance and finds the desire for the variance to be entirely self-imposed. Likewise, the petitioner’s findings of fact do not mention any practical difficulty/hardship for the variance. For these reasons, Staff recommends denial of the request in its entirety.

**GENERAL INFORMATION**

<b>Existing Zoning</b>	C-5	
<b>Existing Land Use</b>	Commercial	
<b>Comprehensive Plan</b>	Auto-related Commercial	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
North:	C-S	North: Commercial
South:	SU-1	South: Commercial
East:	C-4	East: Commercial
West:	C-5	West: Commercial
<b>Thoroughfare Plan</b>		
West 38 <sup>th</sup> Street	Primary Arterial	140 feet of right-of-way existing and 134 feet proposed
<b>Context Area</b>	Metro	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	No	
<b>Wellfield Protection</b>	No	

<b>Area</b>	
<b>Site Plan</b>	3/21/24
<b>Site Plan (Amended)</b>	N/A
<b>Elevations</b>	N/A
<b>Elevations (Amended)</b>	N/A
<b>Landscape Plan</b>	N/A
<b>Findings of Fact</b>	2/21/24
<b>Findings of Fact (Amended)</b>	N/A

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Lafayette Square Area Plan: An International Marketplace (2010)

### Pattern Book / Land Use Plan

- The Marion County Land Use Plan pattern Book recommends the Auto-related Commercial working typology for this site.

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

- Not Applicable to the Site.

### Neighborhood / Area Specific Plan

- The Lafayette Square Area Plan: An International Marketplace (2010) recommends auto-related commercial for this site.
- More broadly, the plan also calls for making the area a pedestrian-friendly environment through urban design and beautification, creating a clean and green environment, and reducing flooding.

### 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

**94-V2-15**, variance of development standards of the Sign Regulations to permit the enlargement of an existing individual pole sign in an integrated center to 240 square feet (maximum 75 square feet permitted by a prior petition for this site, 88-V2-50), **denied**.

**69-Z-290**, rezoning of 11.41 acres, being in D-4 district to the C-5 classification to provide for auto sales and repair, **approved**.

### ZONING HISTORY – VICINITY

**2018UV1045; 5101 W 38<sup>th</sup> Street (west of site)**, Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for parking for school buses (not permitted), with 15-foot transitional yards (20-foot side and rear transitional yards required), **approved**.

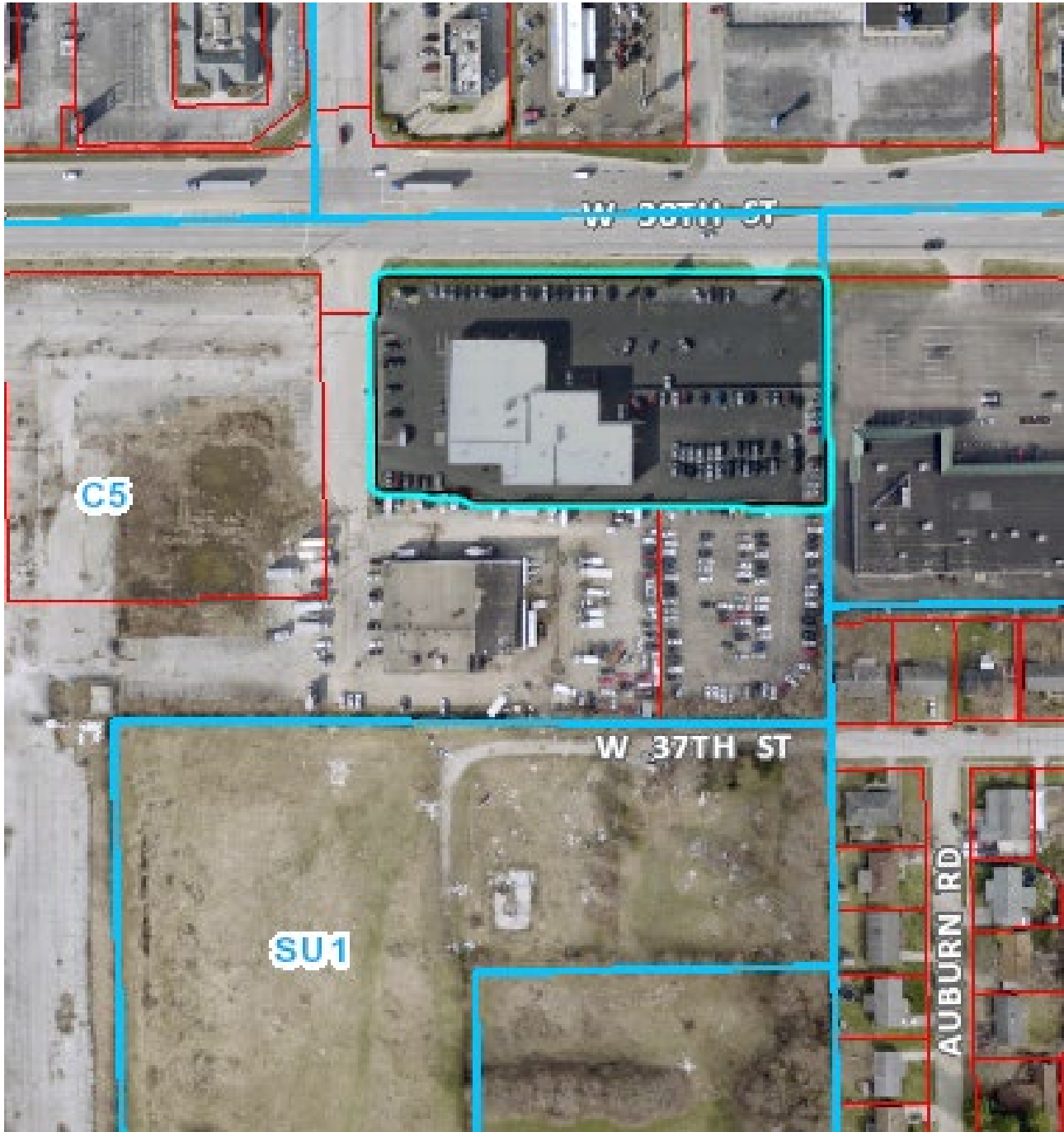
**92-V1-114; 3831 Gemco Lane (north of site)**, Variance of development standards of the Sign Regulations of Marion County to permit the placement of a 5 foot ground sign (4 feet maximum height permitted) for an individual user within an integrated center (one integrated center sign permitted), **denied**.

**87-Z-140; 5151 W 38<sup>th</sup> Street (south of site)**, rezoning of 5.48 acres being in the SU-1 district, to the C-5 classification to provide for an expansion on an automobile and truck dealership for parking and storage, **approved**.

**87-UV3-74; 5054 W 38<sup>th</sup> Street (north of site)**, variance of use of the Commercial Zoning Ordinance to provide for the use of an existing building as an adult cabaret with live entertainment, **withdrawn**.

**83-Z-143; 5025 W 37<sup>th</sup> Street (south of site)**, rezoning of 15.73 acres, being in the D-6II district, to the SU-1 classification to provide for a church, **approved**.

EXHIBITS





## PLAN OF OPERATION

Oak Motors operates a used car dealership at the subject property. This consists of employees of the company negotiating with the general public for the sale of used cars. The property at issue is in two stages. The first is the primary storage space for used cars and is located in the front of the property. The second is the secondary lot located at the back of the property. As Oak Motors conducts its business by purchasing used car at auction, the back lot of the property is used to store those vehicles. It holds approximately 15 to 20 cars for up to two weeks.

**Workforce.** The dealership is staffed by seven salespeople who work from 10am to 7pm Monday through Friday, and 10am-6pm on Saturday. The employees park on the west side of the building in designated parking.

**Clients and Customers.** Typical customers of Oak Motors are the general public seeking purchase of a used car. They come on site and park in visitors parking. The amount of customers per day varies greatly, but there is traffic each day of the week except Sunday.

**Processes Conducted on Site.** As previously stated, the business is engaged in the marketing and sale of used vehicles to the general public. This involves the customer walking around the lot with a salesperson to choose and test drive vehicles. There is an alarm system security that monitors for break in and fire thorough Circle City Alarm Company.

**Materials.** There are no materials utilized on site other than the inventory of used cars for sale.

**Shipping and Receiving.** New inventory is brought in as needed to replenish sold inventory. The cars are brought in by a tow truck or vehicle hauler.

**Waste.** No waste is created by the company.

/s/ David J. Bayt

Corporate Counsel, Oak Motors





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

It is the operation of a used car sales and service based operations.

Three horizontal lines for additional text.

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

It is the operation of a used car sales and service based operations.

Three horizontal lines for additional text.

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

It is needed to store cars that are awaiting repair.

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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

Storing the cars at a separate location would be cost prohibitive and injurious to the reputation of Oak Motors in servicing car rep

Three horizontal lines for additional text.

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

The use of the lot will continue as it has always been used in service to cars awaiting service.

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DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Four horizontal lines for signatures.









