

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-ZON-107
Address: 2831 East 38th Street (*Approximate Address*)
Location: Center Township, Council District #9
Petitioner: Kourain Burgers, LLC, by Joseph D. Calderon
Request: Rezoning of 0.683 acre from the D-5 (TOD) district to the C-3 (TOD) district to provide for a restaurant.

RECOMMENDATIONS

Staff **recommends approval** of this request subject to the following commitment being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

Approval shall be subject to the elimination of the northern most driveway entrance along Oxford Street and the installation of a sidewalk within one year.

SUMMARY OF ISSUES

LAND USE

- ◇ The 0.683-acre site is developed with a restaurant, drive-through, and associated parking area.
- ◇ The site is bordered to the north by a restaurant, zoned C-4, to the east by a gas station, zoned C-4, to the west by an office building, zoned C-4, and to the south by a single-family dwelling, zoned D-5.

REZONING

- ◇ The request would rezone the property to allow the operation of a restaurant on site since it is not permitted in the dwelling district.
- ◇ The site is zoned D-5, which is intended for medium and large-lot housing formats, primarily for detached houses, but may incorporate small-scale multi-unit building types in strategic locations. This district can be used for new, walkable suburban neighborhoods or for infill situation in established urban areas, including both low density and medium density residential recommendations of the Comprehensive Plan, and the Suburban Neighborhood and Traditional Neighborhood Typologies of the Land Use Pattern Book.

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- ◇ The C-3 District is for the development of an extensive range of retail sales and personal, professional, and business services required to meet the demands of a fully developed residential neighborhood, regardless of its size. Examples of such types of uses include neighborhood shopping centers, sales of retail convenience or durable goods, shopping establishments, retail, and personal and professional service establishments. At this neighborhood scale of retail, a fine-grain of accessibility requisite for all modes of travel must be provided and maintained. It does not make provision, however, for those businesses that draw customers in significant numbers from well beyond a neighborhood boundary and are, therefore, unusually heavy traffic generators, such as theaters. It does not allow those businesses that require the outdoor display, sale or storage of merchandise; or require outdoor operations. In general, to achieve maximum flexibility of permitted land use, the C-3 District makes possible a highly varied grouping of indoor retail and business functions.
- ◇ The Comprehensive Plan recommends community commercial development for the site. The Community Commercial typology 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.
- ◇ The site has historically been used for commercial purposes since at least 1972 according to historic aerial images that depicts two buildings surrounded by a large parking area. Additionally, a variance of use (74-UV2-66) issued in 1974 allowed for the alteration of an existing restaurant.
- ◇ The site is located within the Purple Line TOD Strategic Plan and is located within the Transit Oriented Development Secondary Zoning District. It falls within a Transit-Oriented Development (TOD) overlay within the Pattern Book, but it does not remove the use included in this request.
- ◇ The closest station to the site is located at the northeast intersection of the site at 38th Street and Meadows drive. 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.

Staff Analysis

- ◇ The rezoning request would allow for the continued use of the site as a restaurant on a correctly zoned C-3 district instead of the use historically operating in a dwelling district.
- ◇ Because the C-3 district would not negatively affect the surrounding commercial properties or the single-family dwelling to the south that has historically bordered a commercial use, staff is supportive of the request.
- ◇ Furthermore, the rezoning would align with the community commercial recommendation of the Comprehensive Plan.

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- ◇ The site plan notes that one of the existing driveway entrances on to the site will not be utilized and staff's site visit confirmed that it is blocked off. Therefore, Staff's approval shall be subject to the commitment that the northern most driveway entrance along Oxford Street be eliminated and replaced with a sidewalk so that pedestrians can safely access the future Purple Line Station.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-5	Compact	Restaurant
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SURROUNDING ZONING AND LAND USE

North	C-4	Fast-food restaurant)
South	D-5	Residential (Single-family dwelling)
East	C-4	Gas Station
West	C-4	Office

COMPREHENSIVE PLAN

The Comprehensive Plan recommends community commercial development.

THOROUGHFARE PLAN

38th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial street, with an 89-foot existing right-of-way and an 88-foot proposed right-of-way.

THOROUGHFARE PLAN

Oxford Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary collector street, with a 50-foot existing right-of-way and a 56-foot proposed right-of-way.

FLOODWAY / FLOODWAY FRINGE

This site is not located within a floodway or floodway fringe.

WELLFIELD PROTECTION DISTRICT

This site is not located within a wellfield protection district.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

None.

PREVIOUS CASES

97-Z-103; 2831 East 38th Street (subject site), Rezoning of 0.7 acre from D-5 to C-3, **approved – decision letter never issued due to the lack of finalized commitments.**

74-UV2-66; 2831 East 38th Street (subject site), Variance of use, setback and Development Standards to permit alteration of existing restaurant, with pole and wall signs, as per plans filed, off-street parking provided, **granted.**

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ZONING HISTORY – VICINITY

2013-UV2-024; 2947 East 38th Street (east of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for a beauty and barber salon, with retail sales (not permitted), **granted.**

2010-ZON-042; 3801-4005 Meadows Drive, 3805-3806 Dearborn Street (northeast of site), Rezoning of 101.9 acres, from the D-8 (W-5), D-9 (W-5), SU-2 (W-5), C-4 (W-5) and C-S (W-5) Districts, to the D-P (W-5) classification to provide for: a) single-family, two-family and multi-family residential uses, b) commercial uses permitted within the C-1, C-3 and C-4 Districts, c) special and institutional uses permitted within the SU-1, SU-2, SU-6, SU-7, SU-9, SU-37, SU-38, SU-39 Districts, d) mixed-use areas of residential and commercial in the same building as well as Live/work units, including light manufacturing and assembly and residential, commercial and institutional uses within the same building and e) uses permitted within the SU-3 and SU-9 Districts and agricultural uses, including a community garden and the sale of products produced therein, **approved.**

2009-ZON-062; 2901 East 38th Street (east of site), Rezoning of 0.755 acre, from the D-5 (W-5) District to the C-4 (W-5) classification to provide for community-regional commercial uses, **approved.**

94-Z-175; 2947 East 38th Street (east of site), Rezone 0.22 acre, being in the D-5 District, to the C-3 classification to provide for hair styling shop, **approved.**

89-UV1-25; 2809 East 38th Street (west of site), Variance of use and development standards of the Commercial Zoning Ordinance to provide for the outdoor display, sale, and repair of automobiles within the required front setback along Rural Street, and without the required transitional yard landscaping, **granted.**

86-UV2-31; 2948 East 39th Street (east of site); Variance of use of the Dwelling Districts Zoning Ordinance to provide for use of the dwelling as a beauty salon, **granted.**

75-UV2-114; 2901 East 38th Street (east of site), Variance of use and development standards of the Dwelling Districts Zoning Ordinance to remodel existing gasoline station; erect kiosk, service building, canopy, signage, and six-foot fence, **granted.**

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2023-ZON-107; Location Map



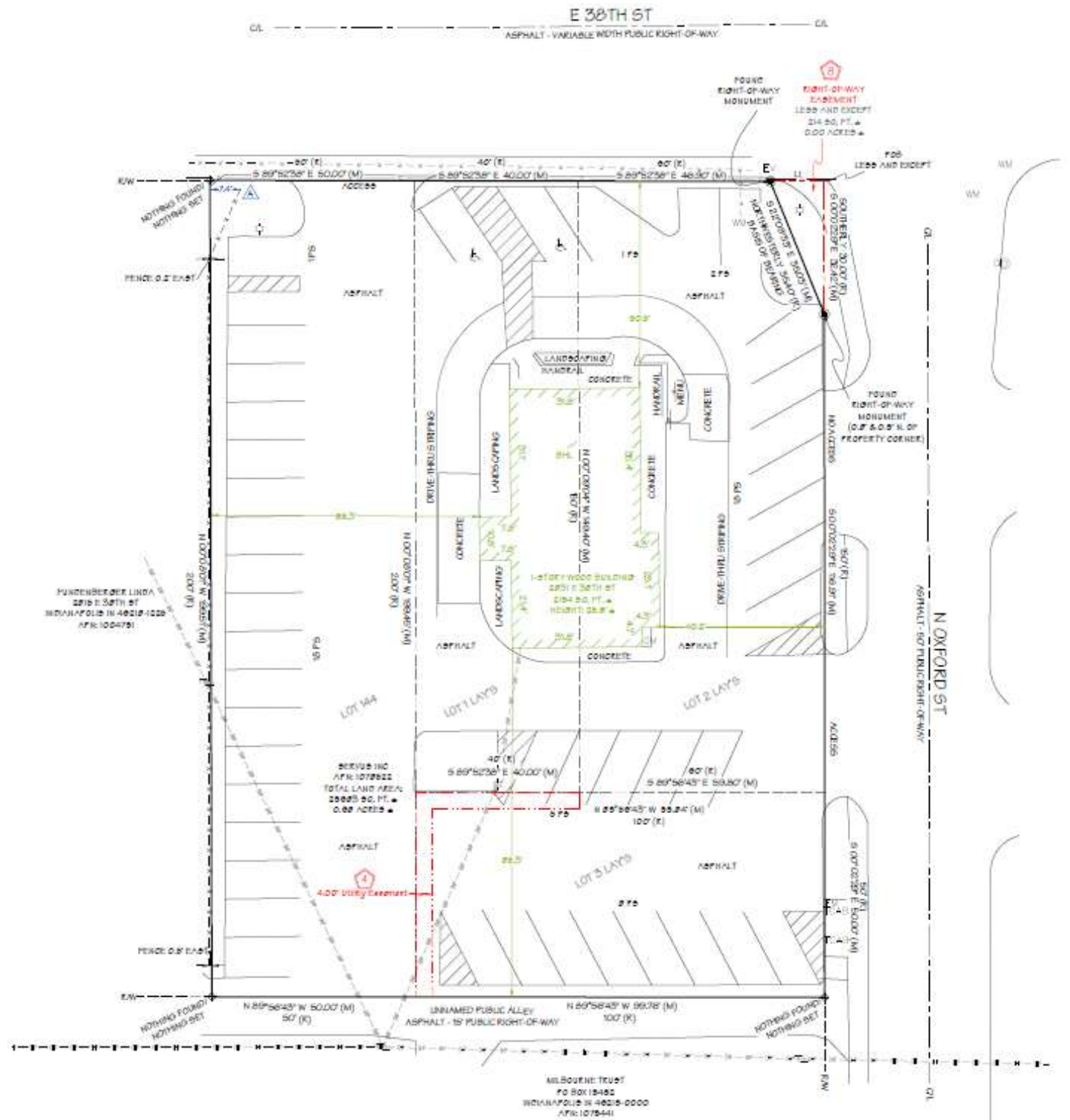
2023-ZON-107; Aerial Map (1972)



2023-ZON-107; Site Plan

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2023-ZON-107; Site Plan (Close-Up)



2023-ZON-107; Photographs



Photo of the Subject Property: **2831 East 38th Street**



Photo of the street frontage along 38th Street.



Photo of the eastern side of the property looking south.



Photo of the western parking area of the site looking south.



Photo of the northern most driveway that staff requests be closed off with a sidewalk installed.



Photo of the rear parking area abutting the alley.



Photo of the office building west of the site.



Photo of the restaurant north of the site.



Photo of the gas station east of the site.



Photo of the single-family dwelling south of the site.