BOARD OF ZONING APPEALS DIVISION II — November 17, 2026

Case Number:	2026-UV2-012
Property Address:	1701 East New York Street (approximate address)
Location:	Center Township, Council District #13
Petitioner:	Sheref Nessem, by Justin Kingen
Current Zoning:	C-3
Request:	Variance of Use of the Consolidated Zoning and Subdivision Ordinance to legally establish an auto repair use (tire sales and installation business), which is not permitted in C-3.
Current Land Use:	Commercial; auto repair
Staff Recommendations:	Staff recommends **denial** of this petition.
Staff Reviewer:	Josh Levesque, Manager—Code Revision and Compliance

PETITION HISTORY

This petition was continued from the September 8, 2026, BZA II hearing to the October 13, 2026, BZA II hearing to allow for further discussion between the petitioner and the community. The petition was subsequently continued to the November 17, 2026 hearing.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

1701 East New York Street is a roughly 0.2-acre parcel at the southeast corner of New York Street and State Avenue. The parcel is zoned C-3. Parcels to the north and east are also zoned C-3 while parcels to the south and west are zoned D-8.

The petitioner is requesting a variance of use to legally establish an automobile repair use (tire sales and installation) which is not permitted in C-3. This variance request seeks to correct the use-specific issue the petitioner was cited for in VIO26-001598. This violation case cited thirteen separate violations on site, including those tied to commitments and conditions of a previous land-use petition (2011DV1045).

The Ordinance defines the C-3 district as the “Neighborhood Commercial District”. This 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 and 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." The Ordinance goes on to state that C-3 "does not allow those businesses that require the outdoor display, sale or storage of merchandise; or require outdoor operations."

The Comprehensive Plan identifies this parcel as Urban Mixed-Use. The Marion County Land Use Plan Pattern Book defines Urban Mixed-Use as "provid[ing] dense, pedestrian-oriented development with a wide range of businesses, services, and institutions that serve both adjacent neighborhoods and the broader Indianapolis community. Buildings are four to eight stories in height with entrances and large windows facing the street. Where possible, sidewalks and other pedestrian spaces should be activated as places to gather or otherwise spend time, such as sidewalk cafes and plazas. Off-street parking should be behind buildings or in garages. Where block lengths are longer than 500 feet, public pedestrian paths should be provided as cut-through's. This typology typically has a residential density of at least 25 to 75 units per acre."

The Ordinance definition of "Automobile, Motorcycle, and Light Vehicle Service or Repair" includdes uses such as: automobile oil change or lubrication shop; automobile tune up shop; engine repair shop; air conditioning equipment repair; automobile body repair/paint shop; brake system repair or service; detailing/trim shop; exhaust system (muffler) repair shop; glass replacement shop; rust proofing; speed/tuning shop; parts and supply store; tire alignment, retreading, or repair shop; tire dealers; motorcycle paint shop; motorcycle repair shop; and transmission repair and service shop. An "Automobile, Motorcycle, and Light Vehicle Service or Repair" (and more specifically a tire shop) use, permitted by right starting in C-4, does not match the lower intensity of the C-3 district, nor does it match the call for pedestrian-oriented development within the Urban Mixed-Use typology.

A variance of use is intended for scenarios in which: 1) a use is not contemplated in the Ordinance; or 2) due to some peculiar condition that would otherwise make the property undevelopable for the best and highest use. In this case, auto repair is a contemplated use within the Ordinance. Furthermore, there does not appear to be any peculiar condition preventing the lot from being used in conformance with designated C-3 uses or uses that are compatible with the Urban Mixed-Use typology. Provided that development standards were met, the C-3 site would allow for uses including consumer services, hair and body care salons, restaurants, convenience stores, office space, grocery stores, and light retail.

C-3 does not permit outdoor storage. While C-3 does allow for accessory parking, it does not permit the parking of inoperable vehicles or vehicles awaiting repair. Nor does it permit the repair of vehicles outdoors.

A previous rezone petition from 2010 (2010-ZON-034) attempted to rezone this property from C-3 to C-5 to provide for an automobile sales lot. Additionally, while a variance petition was approved for this site in 2011 (2011-DV1-045A) to allow for a convenience store with a number of development standards variances for this site the petitioner agreed to exclude an oil change or lubrication shop from the permitted uses. While a tire installation and sales store is a different type of auto repair, this reinforces that auto repair in general has previously been agreed upon as being inappropriate for this site.

For a use variance to be granted, all five criteria must be met:

- The grant will not be injurious to the public health, safety, morals, and general welfare of the community.
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
- The need for the variance arises from some petition peculiar to the property involved.
- 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.
- The grant does not substantially interfere with the comprehensive plan.

Given the lack of conformance this use would have with the Comprehensive Plan, the allowance for other uses at this site, and the incompatibility the intensity of this use would have, staff recommends **denial** of the variance.

The petitioner has offered a commitment to sunset this variance after two years. While such a commitment would appear to lessen the length of the more intense use, the fact is that such a commitment could serve to hamper development on this site that more closely aligns with the Ordinance and the Comprehensive Plan. As such, even with the commitment, staff recommends **denial** of this petition.

Staff will note that the variance requested is solely for the use of the property as an auto repair use. Should this petition be approved, all other violations highlighted in VIO26-001598 will either need to be brought into compliance or cured through future land-use petitions.

Staff will also note that, should this variance be granted, the conditions and commitments applied to this property through 2011-DV1-045A would still be in effect. Modifying or terminating previous conditions or commitments would require a modification petition.

GENERAL INFORMATION

Existing Zoning	C-3	
Existing Land Use	Commercial	
Comprehensive Plan	Urban Mixed Use	
Surrounding Context	**Zoning**	**Surrounding Context**
North:	C-3	North: Commercial
South:	D-8	South: Residential
East:	C-3	East: Commercial
West:	D-8	West: Residential / Commercial
Thoroughfare Plan		
New York Street	Primary Arterial	80-foot existing right-of-way and 78-foot proposed right-of-way
State Avenue	Primary Collector	72-foot existing right-of-way and 56-foot proposed right-of-way
Context Area	Compact	

Floodway / Floodway Fringe	No
Overlay	No
Wellfield Protection Area	No
Site Plan	6/29/2026
Site Plan (Amended)	N/A
Elevations	N/A
Elevations (Amended)	N/A
Landscape Plan	N/A
Findings of Fact	6/29/2026
Findings of Fact (Amended)	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book

Pattern Book / Land Use Plan

- “The Urban Mixed-Use typology provides dense, pedestrian-oriented development with a wide range of businesses, services, and institutions that serve both adjacent neighborhoods and the broader Indianapolis community. Buildings are four to eight stories in height with entrances and large windows facing the street. Where possible, sidewalks and other pedestrian spaces should be activated as places to gather or otherwise spend time, such as sidewalk cafes and plazas. Public spaces may also be programmable for community events. Off-street parking should be behind buildings or in garages. Where block lengths are longer than 500 feet, public pedestrian paths should be provided as cut-through’s. This typology has a residential density of at least 25 to 75 units per acre.”

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

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

87-UV1-1; 1701 East New York Street, Variance of Use of the Dwelling Districts Zoning Ordinance to provide for the continued outside display and sales of automobiles, **approved subject to conditions.**

90-UV1-65; 1701 East New York Street, Variance of Use of the Dwelling Districts Zoning Ordinance to permit the construction of a 65 x 75-foot storage building for the personal storage of collectible cars, **denied.**

96-Z-168; 1701 East New York Street, Rezoning of 0.2 acre from the D-8 to the C-3 district, **approved.**

2010-ZON-034; 1701 East New York Street, Rezoning of 0.22 acre from the C-3 to the C-5 district to provide for an automobile sales lot, **denied.**

2011-DV1-045A; 1701 East New York Street, Variance of Development Standards of the Commercial Zoning Ordinance to provide for a convenience store, with a parking area with an eight-foot setback from State Avenue, with access aisles, with a zero-foot setback from the existing right-of-way of New York Street, with a two-foot east side transitional setback, with a trash container having an eight-foot east side transitional setback and a trash container, building and parking area having a 13-foot south side transitional setback, and to provide for carryout food service within 13 feet of a protected district, **approved subject to commitments.**

2011-DV1-045B; 1701 East New York Street, Variance of Development Standards of the Commercial Zoning Ordinance to provide for a convenience store/gas station with a canopy with a 42-foot setback from the centerline of New York Street and a 66-foot setback from State Avenue and with pump islands with a 51-foot setback from the centerline of New York Street, **withdrawn.**

ZONING HISTORY – VICINITY

73-Z-251; 1728 East New York Street (northeast of site), Rezoning of .623 acre from the D-8 to the C-3 district, **approved subject to Administrator's approval of site plan, landscaping, & fencing.**

88-Z-185; 326 North State Avenue (northwest of site), Rezoning of .30 acre from the D-8 to the C-3 district, **approved subject to commitments.**

95-UV3-119; 1728 East New York Street (northeast of site), Variance of Use of the Commercial Zoning Ordinance to provide for the storage of tape and plastic materials and light assembly associated with an existing industrial facility, **approved subject to conditions.**

98-UV3-9; 1728 East New York Street (northeast of site), Variance of Use of the Commercial Zoning Ordinance to provide for the retail storage and sales of sandpaper, and for the conversion of sandpaper into various sizes, shapes, and combinations, **approved subject to conditions.**

99-UV2-94; 302 North State Avenue (southwest of site), Variance of Use and Development Standards of the Dwelling Districts Zoning Ordinance to provide for the replacement of a previously established building, being the 5th dwelling unit on one lot, with a front setback of 8.8 feet along Marlowe Avenue, being detached from another 4-dwelling unit building on the same lot, **approved subject to conditions.**

2018-DV1-042; 314 North State Avenue (west of site), Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a single-family dwelling, with a 15-foot front setback, and with a secondary dwelling in a detached garage, **approved.**

2021-DV1-010; 302 North Walcott Street (southeast of site), Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the renovation of a two-family dwelling, with balconies with zero-foot front and side setbacks from Walcott Street and Marlowe Avenue, respectively, with concrete stairs/steps/railings and retaining walls within the rights-of-way of Marlow Avenue and Walcott Street, with a deck with a zero-foot north side setback, 28% open space, a three-foot building separation, and structures within the clear sight triangle of abutting streets, **approved.**

2023-ZON-008; 1717 East New York Street (east of site), Rezoning of 0.20 acre from the D-8 to the C-3 district, **approved subject to commitments.**

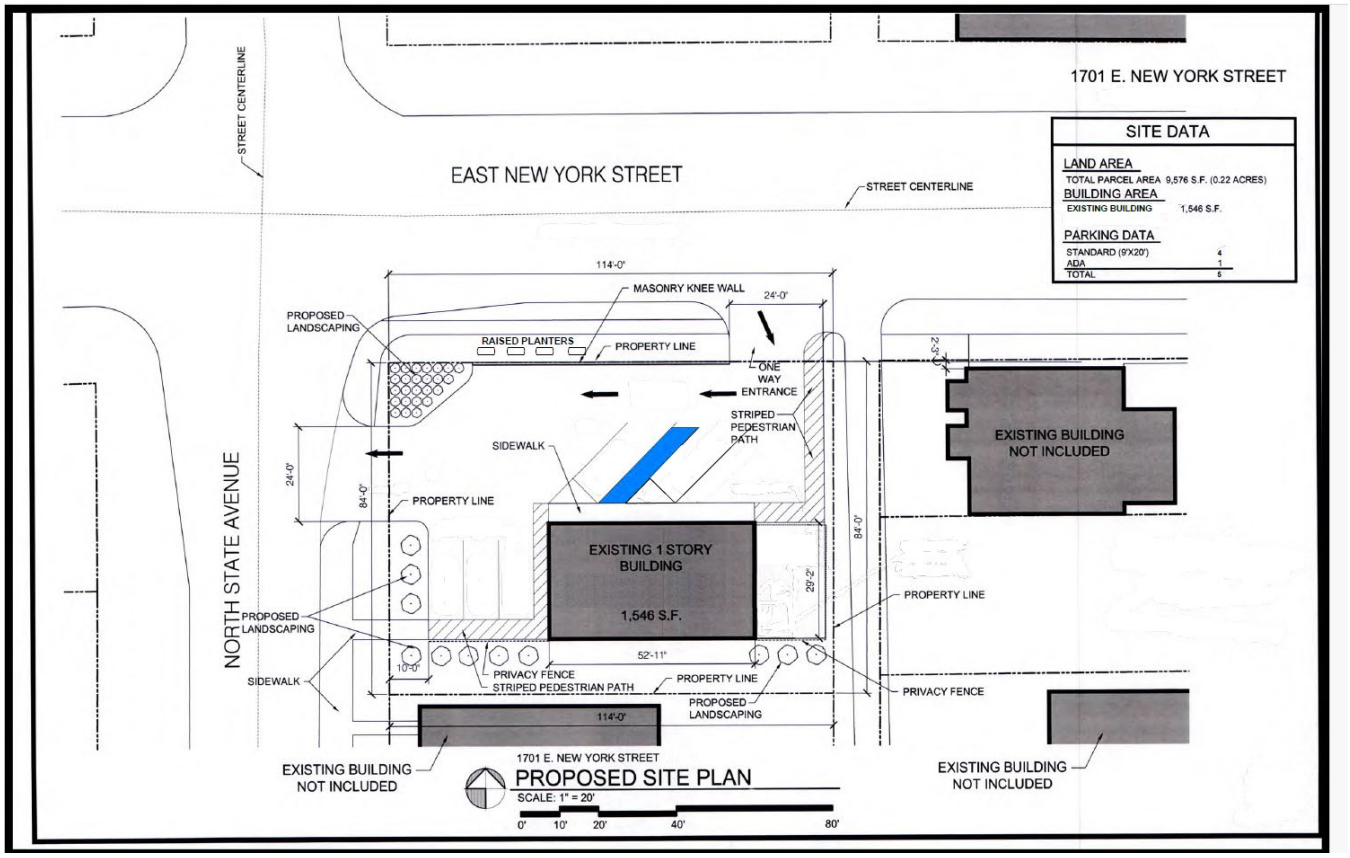
Department of Metropolitan Development
Division of Planning
Current Planning

EXHIBITS

2026UV2012; Aerial Map



2026UV2012; Site Plan



2026UV2012; Findings of Fact

FINDINGS OF FACT

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

The use is a low-intensity commercial activity within the existing building, producing no noxious activity or odors. Since purchasing the property in October 2025, the owner has invested in and significantly improved a site and immediate area that had been in rough condition. The one-year term allows a tenant to occupy the building while redevelopment of the area continues.

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 property is a commercial corner adjoined by a parking lot, a tavern, and other commercial uses, with two-family residential to the south. The area has long supported commercial use, including prior approvals on this site. A privacy fencing & landscaping \will buffer the residential use, so adjacent value will not be adversely affected.

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

The site is a long-established, small commercial building on an arterial corner whose limited size and constrained parking and clear-sight-triangle geometry narrow the conforming uses that can practically occupy it. A conforming tenant cannot be secured immediately, and the variance allows the existing building to remain occupied for a period of one year during that transition.

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

Strict application of the C-3 use restrictions would force the existing building to sit vacant until a fully conforming tenant is secured. Given the building's size and the site's parking and sight-triangle limitations, documented in the City's own prior staff analysis, immediate vacancy would impose an unusual and unnecessary hardship with no offsetting public benefit.

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

The Comprehensive Plan recommends an urban mixed-use future for this site, which is already zoned C-3. The variance does not rezone the land or alter its long-term trajectory; it permits only a temporary, one-year use while a conforming tenant is secured. Being time-limited and leaving the underlying zoning intact, it does not substantially interfere with the plan.

2026UV2012; Commitments from 2011DV1045A

ATTACHMENT "D":

Petitioner agrees to the following commitments:

1. Landscaping shall be completed in accordance with the site plan within six months of the grant of this variance and maintained at all times thereafter. Such landscaping shall meet the provisions of the Marion County Commercial zoning Ordinance. Landscaping in the clear sight triangle will meet the requirements of the city ordinance at all times.
2. The trash from the dumpster shall only be picked up by the refuse company between the hours of 7 am and 9 pm.
3. No alcohol sales shall be permitted on the property.
4. "No loitering" signs will be posted on the property and enforced.
5. Security cameras on the four corners of the building shall be erected on the site and maintained, prior to occupancy of the building.
6. No off site advertising signs will be permitted on the premises
7. No banners, streamers or temporary signs will be permitted on the premises
8. No outdoor speakers will be permitted on the premises
9. Any new exterior lights on the premises will be of the designed and directed towards the interior of the site and downward to eliminate light spillage off of the subject property onto neighbors property or adjacent streets. The areas of new landscaping to the south and east will be lighted with soft pack lights so as not to create dark areas to the south of the privacy fence and the remodeled building on the site.
10. Any new employees to be hired at the facility will be advertised to the Willard Park Neighborhood Association prior to distribution to the public in general.
11. No drug paraphernalia or tobacco pipes shall be sold on the premises.
12. No sex toys, novelties, adult magazines or adult videos or dvds shall be sold on the premises.

2026UV2012; Commitments from 2011DV1045A (cont'd)

ATTACHMENT "E":

Owner commits to exclude the following uses from the site:

1. Check cashing facility
2. Emergency shelter
3. Outdoor advertising signs (billboards)
4. Bait and Tackle shop
5. Liquor Store
6. Pawn shop
7. Tobacco store
8. Oil change or lubrication shop
9. Social club
10. Fireworks sales
11. Second hand store

2026UV2012; Commitments offered by petitioner

1701 East New York Street – Commitments

1. Tires only. The shop will only do tire sales and tire repair. No body work, painting, brake work, air conditioning work, or engine or other mechanical repair.

2. Two years. The tire shop can operate for two years from the date the variance is approved. After that, it stops.

3. Where tire repair happens. All tire repairs will be done inside the building or in designated areas in the parking lot.

4. Hours. Monday through Friday, 8:00 a.m. to 8:00 p.m. Saturday, 9:00 a.m. to 5:00 p.m. Closed on Sunday.

5. Parking. No customer cars left overnight. No more than five cars on the property while the shop is open. No cars parked in the alley. No cars parked in the handicap space.

6. Signs. The existing wavy signs will be taken down and removed from the property. No banners, streamers, or temporary signs. No off-site advertising signs.

7. Landscaping. A raised planter bed will be installed at the corner within six months of approval. All landscaping shown on the site plan will be completed within six months of approval and kept up after that, and will meet the city's landscaping requirements, including at the clear sight triangle.

8. Sign or mural. A sign or a Willard Park mural will be put on the property within six months of approval.

9. No alcohol. No alcohol will be sold on the property.

10. No loitering. "No loitering" signs will be posted on the property and enforced.

11. Security cameras. Security cameras on the four corners of the building will be kept in place and maintained.

12. No outdoor speakers. No outdoor speakers on the property.

13. Lighting. Any new outdoor lights will be aimed down and toward the inside of the site so light does not spill onto neighbors' property or the street. New landscaped areas to the south and east will have soft lighting so there are no dark areas south of the privacy fence and the building.

14. Trash pickup. Trash pickup from any dumpster will only happen between 7:00 a.m. and 9:00 p.m.

15. No drug paraphernalia. No drug paraphernalia or tobacco pipes will be sold on the property.

16. No adult items. No sex toys, novelties, adult magazines, or adult videos or DVDs will be sold on the property.

11.5.26

2026UV2012; Photographs



Photo 1: Looking at property from State Avenue

2026UV2012; Photographs (continued)



Photo 2: Another view of property from State Avenue

2026UV2012; Photographs (continued)



Photo 3: Viewing western side of property with residences beyond

2026UV2012; Photographs (continued)



Photo 4: View of property from State Avenue looking west

2026UV2012; Photographs (continued)



Photo 5: View of subject site along New York Street

2026UV2012; Photographs (continued)



Photo 6: West side of property

2026UV2012; Photographs (continued)



Photo 7: Looking west down New York Street

2026UV2012; Photographs (continued)



Photo 8: Looking north across New York Street