

BOARD OF ZONING APPEALS DIVISION III

June 17, 2025

Case Number: 2025-UV3-004
Address: 5284 38th Street North Drive (approximate address)
Location: Lawrence Township, Council District #9
Zoning: SU-1 (TOD)
Petitioner: The National Bank of Indianapolis, by Joseph D. Calderon
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the erection of a freestanding Automated Teller Machine (ATM) (not permitted).

Current Land Use: Accessory parking lot

Staff Recommendation: Staff recommends Denial of this petition.

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This petition was continued for cause at the request of the petition from the May 20, 2025, hearing, to the June 17, 2025, hearing.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

VARIANCE OF USE

- ◇ The subject site consists of an accessory parking lot owned by the adjacent religious use to the east, and also shared with the funeral home to the west.
- ◇ This portion of East 38th Street is a segment along the Purple Line bus rapid transit system. Therefore, the property is also located within the Transit Oriented Development Secondary District, which is more restrictive on automotive uses. The surrounding neighborhood consists of previously developed commercial uses.
- ◇ The Transit Oriented Development Secondary District is established on all lots, wholly or partially, within 1,000 feet from the centerline of a Bus Rapid Transit (BRT) Line. The intent of the Transit Oriented Development (TOD) Secondary District is to coordinate more compact, walkable, and urban development patterns with public investment in the transit system. These development patterns ensure that walking and biking are viable options for short trips and transit is a priority for longer trips. Development patterns and site designs that prioritize automobile travel undermine these public and private investments.

- ◇ This district follows the policies and principles of the comprehensive plan, the transit-oriented development strategic plans, and the Livability Principles in this code, and has the following specific design objectives:
 - Place a wide range of housing types within walking distance of commercial centers and transit stops or stations, and at a critical mass that supports these places.
 - Create connections through many different modes of transportation between neighborhoods and places for commercial services and employment.
 - Provide a concentration of many different and small-scale uses with a fine-grained pattern that integrates and transitions well with the neighborhoods they support.
 - Ensure human-scale design that prioritizes relationships of sites and buildings to the streetscapes.
- ◇ Table 742.207-2 in the Ordinance provides a list of prohibited uses and their limitations. For drive thru accessory uses, including ATM's, in this instance greater than 601 feet from a Transit Station, are prohibited except where they are located behind or to the side of the building and all access is provided by alleys, or along a Buffer Frontage. The proposed use does not meet this exception as no building is proposed or provided, and the ATM it is a standalone drive up use in a religious use accessory parking lot zoned SU-1.
- ◇ As this site lies within the Transit Oriented Development (TOD) overlay for the Bus Rapid Transit (BRT) Purple Line, proposed uses, and the redevelopment of existing uses as for this property, should be oriented towards supporting the overlay district design and establishing greater walkability in the district. The proposed request for the drive-up automated teller machine would allow a non-compliant auto-centric use that is non-contributing in the overlay which would be counterproductive to the intent of establishing greater walkability and connectivity in the area.

Freestanding Automated Teller Machine (ATM) as a primary use

- ◇ A freestanding automated teller machine is not permitted as a primary use in any district in the zoning ordinance. They are required to be incorporated within/along a building or incorporated as an accessory drive through with a primary building. This was intended to promote both high efficiency use of underdeveloped lots and an element of crime prevention through environmental design by increasing the odds of public surveillance and view sheds to dispel opportunistic crime.
- ◇ There is no practical difficulty with the use of the site for religious uses as it is zoned. It has been used as an accessory parking lot and can continue to be used as an accessory parking lot without the requested variance.
- ◇ If an ATM is warranted for this site, then it can be incorporated within/along a building that is the primary use, and zoning compliant, without the need for a variance.

GENERAL INFORMATION

Existing Zoning	SU-1	
Existing Land Use	Accessory Parking Lot	
Comprehensive Plan	Community Commercial uses	
Surrounding Context	Zoning	Surrounding Context
	North: D-4	Single Family Dwellings
	South: C-3	Commercial Retail
	East: SU-1	Primary Religious Use
	West: C-1	Funeral Home
Thoroughfare Plan		
East 38 th Street North Drive	Local Street	39-foot existing right-of-way and 48-foot proposed right-of-way
Context Area	Compact area	
Floodway / Floodway Fringe	No	
Overlay	Purple Line Transit-Oriented Development	
Wellfield Protection Area	N/A	
Site Plan	March 18, 2025	
Landscape Plan	N/A	
Findings of Fact	March 18, 2025	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends Community Commercial uses for the site.

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Community Commercial typology that 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

- The subject is within 1000 feet of the existing Purple Line and is designated with the Walkable Neighborhood typology by the comprehensive plan. This typology allows for a mix of uses near transit stations with stabilized residential uses beyond.

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

2018-ZON-053; 5284 East 38th Street North Drive (subject site), requested the rezoning of one acre from the D-4 district to the SU-1 classification, **approved**.

2016-ZON-070; 5523 East 38th Street, requests rezoning of 0.9 acre from the D-4 district to the C-4 classification, **granted**.

2013-UV2-010; 5523 East 38th Street; requested a variance of use of the Dwelling Districts Zoning Ordinance to provide for outdoor seating, **granted**.

2012-HOV-021; 5252 E. 38th Street North Drive (west of site), requested a variance of development standards to provide for a 2,569-square foot, eight bay garage, creating accessory use and structure area of 37.3% of the primary use, **granted**.

2007-ZON-140; 5501 East 38th Street and 3759 North Whittier Place, requested rezoning of 0.2 acre from the D-4 District, to the C-3 classification to provide for neighborhood commercial uses, **granted**.

2001-ZON-065; 5402 - 5432 East 38th Street, requests a rezoning of 2.84 acres from C-3 to SU-37, **granted**.

97-Z-96; 5605 East 38th Street (east of site), requested rezoning of 0.26 acre from the D-4 classification to the C-1 classification to provide for offices uses, **approved**.

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EXHIBITS

Location Map Subject Site



Findings of Fact

Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

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 ATM will facilitate on "under baned" community, and will be located on an accessory parking lot for a church, with very few conflicts in traffic patterns.

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 proposed ATM will not adversely affect access or visibility to or from any adjoining property.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

the Subject Property is in an urban area, where parking for a use can be off-site, and to preclude an ATM just because the building is across the street results in a practical difficulty in complying with the ordinance.

DECISION

Photographs



Subject site, looking north.



Subject site, looking west.



Adjacent religious use to the east, looking northeast.



Adjacent commercial retail to the south.



Adjacent funeral home to the west.



Adjacent single family dwellings to the north.