

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-ZON-116
Address: 2002 North Tibbs Avenue (*Approximate Address*)
Location: Wayne Township, Council District #11
Petitioner: Hugo Rubin de Celis
Request: Rezoning of 0.35 acres from the D-5 district to the C-3 district to provide for food sales from food trucks.

ADDENDUM FOR FEBRUARY 7, 2024, METROPOLITAN DEVELOPMENT COMMISSION

This petition was heard by the Hearing Examiner on January 11, 2024. After a full hearing, the Hearing Examiner recommended denial of the request. Subsequently, the petitioner filed an appeal of the Hearing Examiner's decision. A memorandum of her recommendation is attached.

January 11, 2024

RECOMMENDATIONS

Staff **recommends denial** of the request.

SUMMARY OF ISSUES

LAND USE

- ◇ The 0.35-acre subject site consists of two parcels (9000337 and 9000336) and is developed with a single-family dwelling and storage shed. The property is in a well-established residential neighborhood surrounded by single-family dwellings in each direction.

REZONING

- ◇ The request would rezone a residential lot from the D-5 district to the C-3 district to provide for food sales from food trucks, which is not permitted in the existing dwelling district.
- ◇ The D-5 District 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.

(Continued)

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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 site falls within the Near West Neighborhood Land Use Plan (2014), which recommends 3.5 to 5 residential units per acre development.

Staff Analysis

- ◇ A food truck service would be classified as an eating establishment or food preparation use in the Consolidated Zoning and Subdivision Ordinance. That use is permitted within the C-3, C-4, C-5, C-7, MU-2, MU-3, and MU-4 districts and all of the central business districts. However, because the food truck would constitute outdoor sales, it would not be permitted in the C-3, or C-4 districts as primary uses. Instead, they would be limited in duration throughout the year per the Outdoor Display and Sales, Temporary use-specific standards below:

Outdoor Display and Sales, Temporary

1. In the Dwelling districts, any Temporary Outdoor Display and Sales shall meet the standards of Chapter 987, Article II (Garage Sales).
2. Temporary Outdoor Display and Sales by transient merchants are permitted if licensed under Chapter 987, Article I (Transient Merchant Activity).
3. Temporary Outdoor Display and Sales must not be located in any transitional yard or edge buffering area or required landscape area.
4. Unless otherwise regulated, Temporary Outdoor Display and Sales are limited to:
 - a. 30 days and no more than 3 times a calendar year;
 - b. Using no more than 10% of the required on-site parking spaces and maintaining vehicle maneuverability on the site;
 - c. Maintaining a setback of at least 5 feet from any lot line and any sidewalk;
 - d. Not obstructing any clear sight triangular area.
5. In the C-3, CBD and MU districts, Temporary Outdoor Display and Sales shall only be permitted once each month for a 3-day period provided the outdoor display and sales area is limited to 200 square feet or less.

(Continued)

STAFF REPORT 2023-ZON-116 (Continued)

5. In the C-4 district, Temporary Outdoor Display and Sales shall only be permitted once each month for a 3-day period provided the Temporary Outdoor Display and Sales is limited to 200 square feet or less. In addition, Temporary Outdoor Display and Sales for dealers of motor vehicles shall be permitted if the temporary outdoor display and sales:
 - a. Meets the requirements of IC 9-23-2-6 and IC 9-23-2-7;
 - b. Limited in duration to a total of 10 calendar days per event, and no more than two events per calendar year per site or integrated center;
 - c. Limited to vehicles with GVWR of less than 14,000 pounds;
 - d. Not located within 500 feet, measured in any direction, of any protected district. (See Section 743-301) The measurement shall be taken from the perimeter of the display or operations area of the Temporary Outdoor Display and Sales to the zoning boundary of the protected district;
 - e. Complies with all setback requirements for a parking area on the site;
 - f. Does not encroach upon any interior access drive or parking maneuvering area or otherwise inhibit the internal circulation of the remaining vehicle areas.
- ◇ As proposed, the commercial zoning district would be an undue intrusion into a long-established residential area. This would result in additional intensity from the significant commercial customer base, placing demands on parking, and creating increased traffic, lighting, and noise. These externalities would pose a negative impact on the quality of life for the surrounding residents.
 - ◇ A plan of operation was not submitted with the request so the hours of operation, number of days of activity, and the number of anticipated customers cannot be predicted.
 - ◇ Given the area's D-5 zoning and existing development pattern, neighboring and nearby homeowners have a reasonable expectation of protection from commercial development.
 - ◇ Furthermore, the commercial use would not align with the residential development recommendation of the Near West Neighborhood Land Use Plan (2014) and the site could continue to be developed and used as a residential property as intended.
 - ◇ Staff reached out to the petitioner to confirm if the single-family dwelling would continue to be used residentially, but a response was not provided. If it were to remain, then the residential use would not be permitted in the proposed C-3 District and a variance of use would be required.
 - ◇ Due to the proposed commercial rezoning and uncertainty of the anticipated use of the existing buildings, staff is recommending denial of the request.
 - ◇ Staff would note that Temporary Outdoor Display and Sales by transient merchants are permitted if licensed under Chapter 987, Article I (Transient Merchant Activity). There is also the option of obtaining a Special Event Permit for a limited time and must meet the requirements for the permit and event. Information for either of these options would need to be obtained with the Department of Business and Neighborhood Services.

(Continued)

STAFF REPORT 2023-ZON-116 (Continued)

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-5 Compact Residential (Single-family dwelling)

SURROUNDING ZONING AND LAND USE

North D-5 Residential (Single-family dwelling)
South D-5 Residential (Single-family dwelling)
East D-5 Residential (Single-family dwelling)
West D-5 Residential (Single-family dwelling)

NEIGHBORHOOD PLAN

The Near West Neighborhood Land Use Plan (2014) recommends 3.5 to 5 residential units per acre development.

THOROUGHFARE PLAN

Tibbs Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary collector street, with a 70-foot existing right-of-way and a 56-foot proposed right-of-way.

THOROUGHFARE PLAN

20th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing right-of-way and a 48-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.

SITE PLAN

File-dated November 8, 2023.

PROPOSED COMMITMENTS

File-dated November 8, 2023.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

None.

PREVIOUS CASES

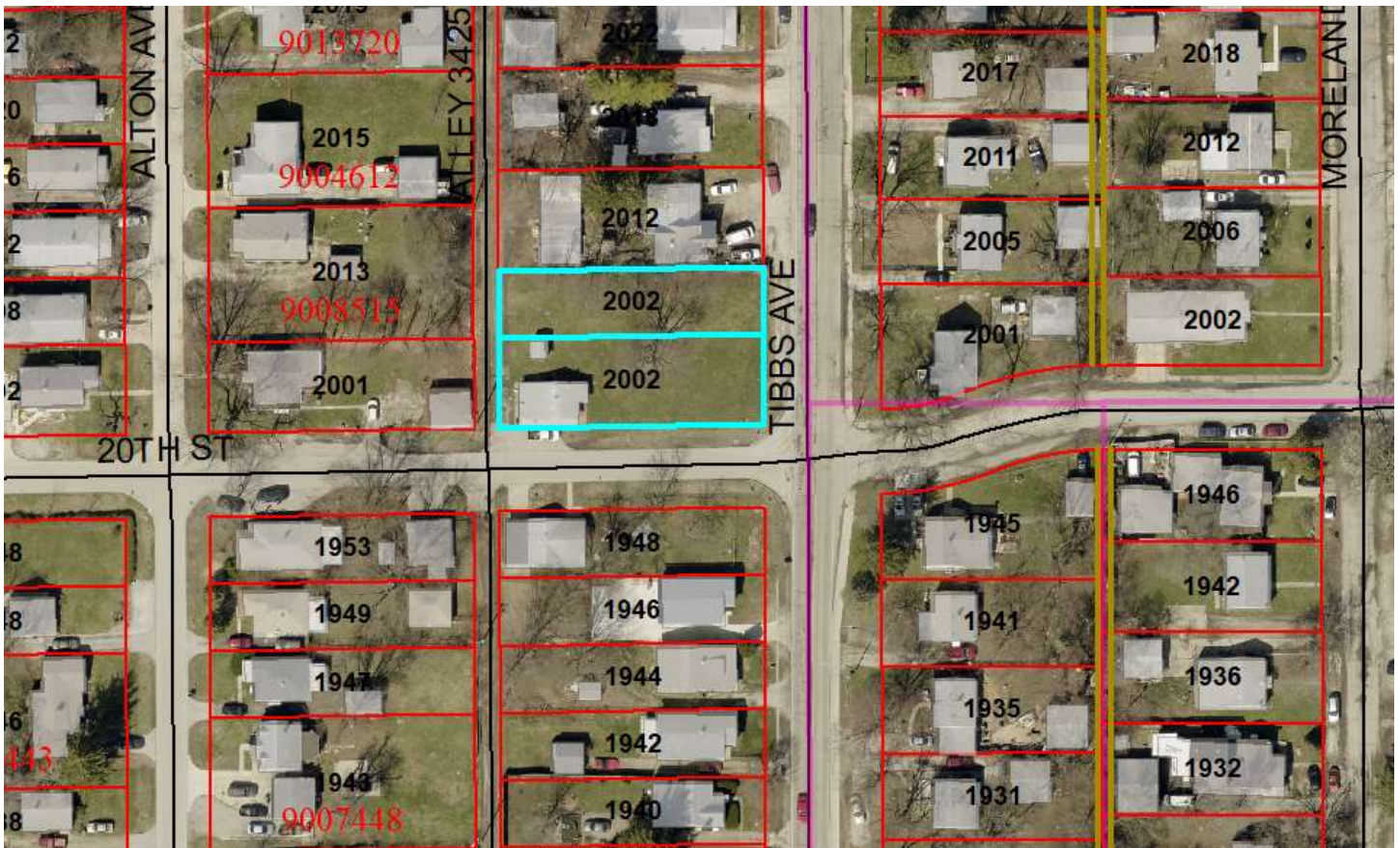
None.

ZONING HISTORY – VICINITY

None.

MI

2023-ZON-116; Location Map



2023-ZON-116; Hearing Examiner's Memo

2023-ZON-116

2002 North Tibbs Avenue

The petition requests the rezoning of 0.35 acre from the D-5 district to the C-3 district to provide for food sales from food trucks.

Your Hearing Examiner visited the site prior to the hearing and noted the single family residence and storage shed at the west/back portion of the site. Single family residences surround the site.

The petitioner explained that he had spoken with other food truck owners about redeveloping this site for a food truck court, with up to 10 food trucks on the site at one time, and typical hours being 6 a.m. until 10 p.m. Sunday through Thursday, and 6 a.m. until midnight Friday and Saturday. The residential structure on the site would be used as an office, and electrical hookups would be available to the food trucks so they do not have to use generators.

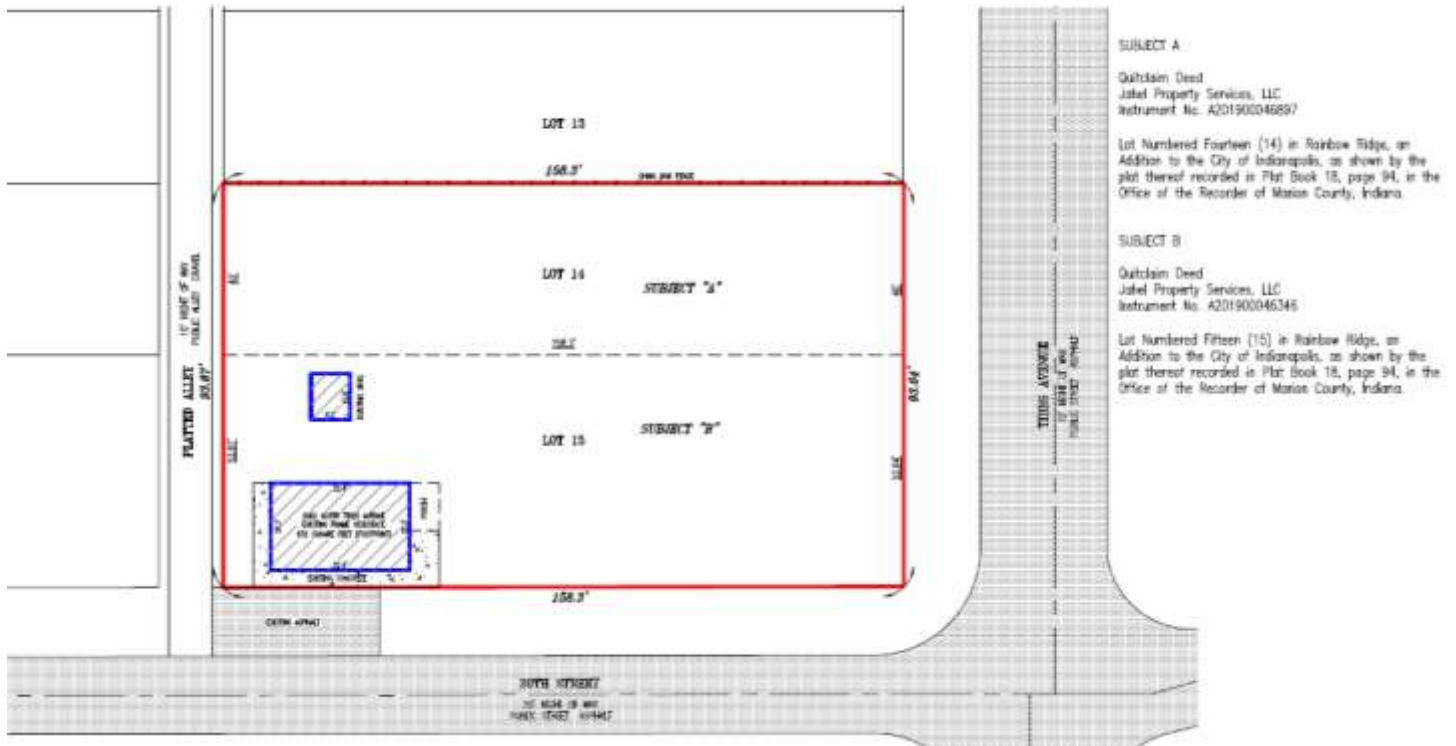
No remonstrators attended the hearing, and there was no correspondence submitted.

Staff stated that the requested C-3 district is inconsistent among D-5 zoning, and it would allow uses incompatible with the surrounding residential use. Staff expressed concern the outdoor use would have on the residences, especially with the noise, lights, and hours associated with the proposed use.

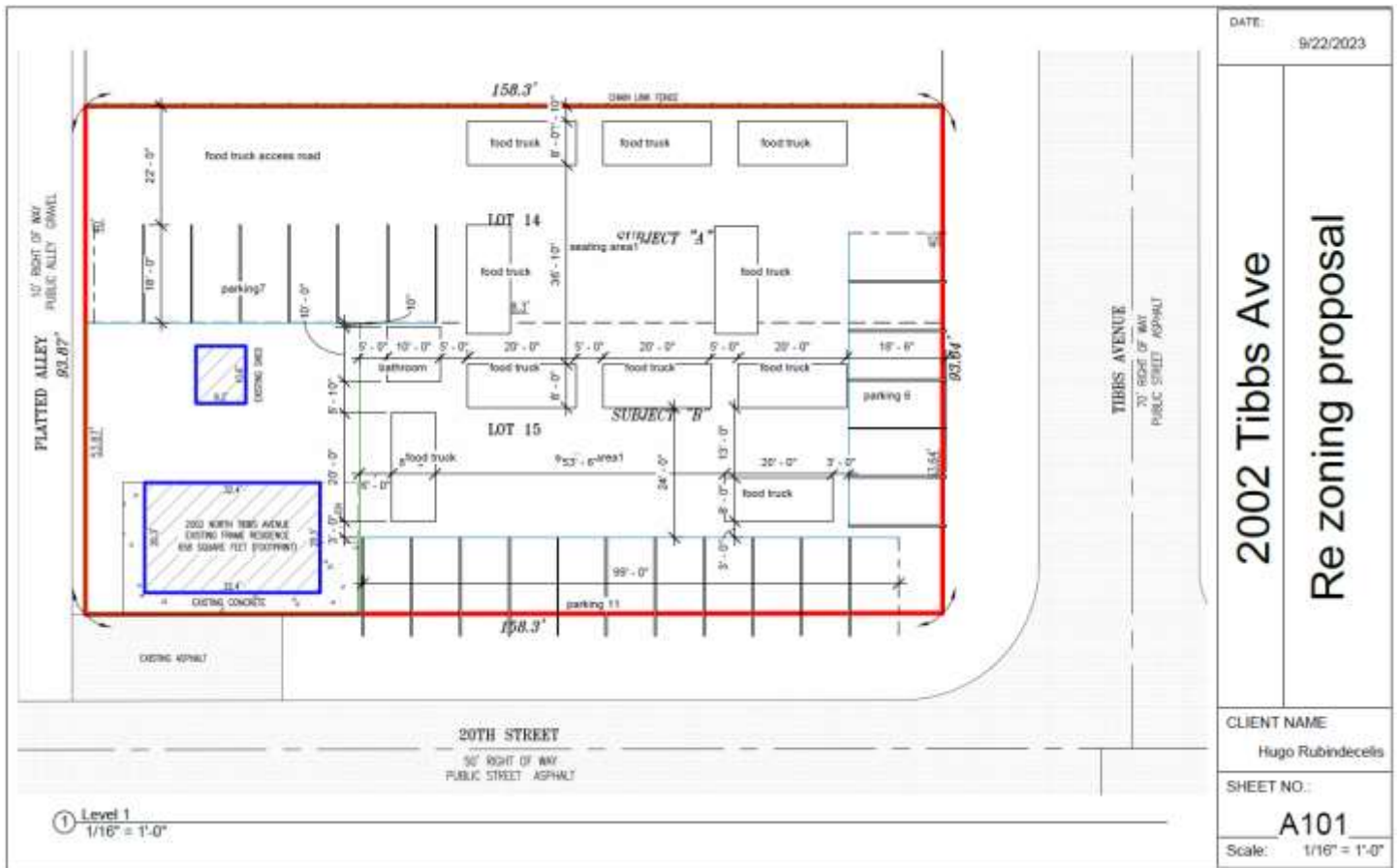
In your Hearing Examiner's opinion, the requested C-3 district is inconsistent in this area, and would allow uses that are incompatible and inappropriate in this neighborhood. While the food truck court is an interesting concept, it should not be located in a residential area. Denial of this petition was recommended.

For Metropolitan Development Commission Hearing on February 7, 2024

2023-ZON-116; Existing Site Plan



2023-ZON-116; Proposed Site Plan



2023-ZON-116; Proposed Commitments

STATEMENT OF COMMITMENTS

**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description: Lot number fourteen 14 and fifteen 15, in rainbow ridge, an addition to the city of Indianapolis, as shown by the plat thereof recorded in Plat Book 18, page 94, in the Office of the Recorder of Marion County, Indiana.

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
 2. The owner agrees to comply with regulations that pertain to zoning C-3 once the city allows for this change.
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2023-ZON-116; Photographs



Photo of the storage shed and single-family dwelling on site.



Photo of the vacant portion of the subject site.



Photo of the Subject Property: 2002 North Tibbs Avenue



Photo of the Subject Property: 2002 North Tibbs Avenue



Photo of the street frontage along 20th Street where parking is not permitted, but proposed on site.



Photo of street frontage along Tibbs Avenue where parking is proposed.



Photo of single-family dwellings east of the site.



Photo of single family dwellings southeast of the site.



Photo of single-family dwellings south of the site.



Photo of a single-family west of the site.



Photo of the alley west of the subject site where food trucks would gain access to the site.