

## STAFF REPORT

### Department of Metropolitan Development Division of Planning Current Planning Section

**Case Number:** 2023-CAP-856 / 2023-CVR-856  
**Address:** 6333 and 6345 West Thompson Road (approximate address)  
**Location:** Decatur Township, Council District #20  
**Zoning:** C-1  
**Petitioner:** Derrick S. Emmons & Sue Ann Emmons and Kentucky Avenue Holdings, LLC, by William T. Niemier  
**Request:** Modification of Commitments, related to 2003-ZON-119, to modify Commitments #1, #2 and #6 to allow for a painting business and truck rental business (previous commitments prohibited trucks heavier than a one-ton truck, limited the number of trucks parking overnight to one, and limited the permitted uses to C-1 uses).

Variance of use of the Consolidated Zoning and Subdivision Ordinance to legally establish a painting business and a truck rental business (not permitted).

### ADDENDUM FOR DECEMBER 6, 2023, METROPOLITAN DEVELOPMENT COMMISSION

This petition was heard by the Hearing Examiner on November 9, 2023. After a full hearing, the Hearing Examiner recommended denial of the modification and variance of use requests. Subsequently, the petitioner filed an appeal of the Hearing Examiner's decision. A memorandum of her recommendation is attached.

### November 9, 2023

This petition was automatically continued from the October 12, 2023 hearing, to the November 9, 2023 hearing at the request of a registered neighborhood organization.

### RECOMMENDATIONS

Staff **recommends denial** of the modification request.

Staff **recommends denial** of the variance of use request.

### SUMMARY OF ISSUES

#### LAND USE

- ◇ The subject site consists of two parcels, zoned C-1, that are developed with single-family dwellings and detached accessory structures. The single-family dwelling at 6345 West Thompson Road was converted into an office. The single-family dwelling at 6333 West Thompson Road appeared to be vacant when staff visited the site, but numerous vehicles were present.

(Continued)

## **STAFF REPORT 2023-CAP-856 / 2023-CVR-856 (Continued)**

- ◇ The property is bordered to the west by an automobile machine shop to the west, zoned C-1, a single-family dwelling to the east, zoned D-3, a fast-food restaurant to the north, zoned C-4, and single-family dwelling and a vacant parcel, zoned D-3 and D-A, to the south.
- ◇ The property at 6333 West Thompson Road was rezoned from the D-3 district to the C-1 district in 1980. The property at 6345 West Thompson Road was granted a variance of use for a floral shop in 1995. The property was then rezoned from the D-3 District to the C-1 District in 2003. Variance of use requests for a heating and cooling contractors office and construction of a 2,800-square foot pole barn were denied in 2003 and 2006. A variance of use to legally establish a truck rental business was withdrawn due to the commitments that were in place, which needed to be modified based on the request.

### **MODIFICATION**

- ◇ The request would modify Commitments #1, #2 and #6 to allow for a painting business and truck rental business related to rezone petition 2003-ZON-119 at 6345 Thompson Road. The previous commitments prohibited trucks heavier than a one-ton truck, limited the number of trucks parking overnight to one, and limited the permitted uses to C-1 uses.
- ◇ Instead, the plan of operation notes that 6345 and 6333 West Thompson Road would operate a commercial and residential painting business in addition to a truck rental business which were not permitted by the commitment limitation for C-1 uses.
- ◇ The maximum number of trucks to be on site would be eight where only one truck was allowed to be parked overnight.
- ◇ Lastly, the trucks on site would likely weigh more than the one-ton truck weight limitation.

### **VARIANCE OF USE**

- ◇ The grant of the request would allow for the operation of a painting business and a truck rental business in the C-1 district.
- ◇ The C-1 District is designed to perform two functions: act as a buffer between uses, and provide for a freestanding area that office uses, compatible office-type uses, such as medical and dental facilities, education services, and certain public and semipublic uses may be developed with the assurance that retail and other heavier commercial uses with incompatible characteristics will not impede or disrupt. Since the buildings for office, office-type and public and semipublic uses are typically much less commercial in appearance, landscaped more fully and architecturally more harmonious with residential structures, this district can serve as a buffer between protected districts and more intense commercial or industrial areas/districts - if designed accordingly. This district, with its offices and other buffer type uses, may also be used along certain thoroughfares where a gradual and reasonable transition from existing residential use should occur.

(Continued)

## **STAFF REPORT 2023-CAP-856 / 2023-CVR-856 (Continued)**

- ◇ The operation of a painting business is categorized as a Commercial and Building Contractors use which is only permitted by right in the C-5 and C-7 district and by Special Exception in the C-4 district. The truck rental business is categorized as a Truck or Heavy Vehicle Sales, Rental, or Repair use, which is only permitted in the C-7 district. Neither use is permitted in the existing C-1 district because they are more intense, and typically require outside display of vehicles or materials.
- ◇ The Comprehensive Plan recommends community commercial development along the northern half of the property and recommends suburban neighborhood development along the southern half.
- ◇ 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 Suburban Neighborhood typology is predominantly made up of single-family housing but is interspersed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well-connected, and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park.

### **Staff Analysis**

- ◇ Based on the split Comprehensive Plan recommendations and the existing residential uses east and south of the site, staff determined that the use limitations of the C-1 district are in line with the Comprehensive Plan.
- ◇ More intense commercial uses would be inappropriate and should not be proposed where the addition of said uses could cause the use or value of the area adjacent to the property to be affected in a substantially adverse manner because the proposed use could decrease the desirability of the area for potential residents, largely due to the location of a heavy commercial use next door.
- ◇ The variance request does not arise from a condition peculiar to the property involved because the parcels could be used for any of the permitted C-1 uses without the need for a variance or modification of commitments.
- ◇ The strict application of the terms of the zoning ordinance would not constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought because the site is appropriately zoned to be in line with the Comprehensive Plan and could be used as such.
- ◇ Staff would not support the request for the modification of the commitments or variance of use.

(Continued)

## STAFF REPORT 2023-CAP-856 / 2023-CVR-856 (Continued)

### GENERAL INFORMATION

#### EXISTING ZONING AND LAND USE

C-1 Metro Truck Rental Business / Painting Business

#### SURROUNDING ZONING AND LAND USE

North	C-4	Commercial (Fast Food Restaurant)
South	D-3 / D-A	Residential (Single-Family Dwelling) / Undeveloped.
East	D-3	Residential (Single-Family Dwelling)
West	C-1	Commercial (Automobile Machine Shop)

#### COMPREHENSIVE PLAN

The Comprehensive Plan recommends community commercial development for the northern portion and suburban neighborhood development for the southern portion.

#### THOROUGHFARE PLAN

Thompson Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary collector street, with a 33-foot existing right-of-way and an 80-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 September 5, 2023.

### ZONING HISTORY – SITE

#### EXISTING VIOLATIONS

##### 1. **VIO22-000949; 6345 West Thompson Road**

- a. *The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - Vehicle rental is not a permitted accessory use for a C-1 zoning district).*
- b. The location, erection, or maintenance of any sign not specifically permitted by the Zoning Ordinance; (744-903. G.1. - Signs in the public Right-of-Way are prohibited).
- c. Failure to comply with use-specific standards and zoning district development standards for the C-1 district; (744-404. D.7.a. - The parking spaces lack 4-inch durable painted lines, curbs or signage).
- d. *Failure to comply with use-specific standards and zoning district development standards for the C-1 district; (Table 744-402-1: - Failure to provide the required off-street parking spaces for a painting contractor...5 off-street parking spaces are required).*
- e. *Failure to comply with use-specific standards and zoning district development standards for the C-1 district; (Table 744-402-2: - Failure to provide the required ADA parking...1 handicap parking space required).*
- f. The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - Recreational vehicle storage is not a permitted primary use in a C-1 zoning district).

(Continued)

## **STAFF REPORT 2023-CAP-856 / 2023-CVR-856 (Continued)**

### PREVIOUS CASES

**2022-UV2-014; 6333 and 6345 West Thompson Road** (subject site), Variance of use of the Consolidated Zoning and Subdivision Ordinance to legally establish a truck rental business (not permitted), **withdrawn**.

**2006-UV1-008; 6345 West Thompson Road** (subject site), Variance of Use of the Commercial Zoning Ordinance to legally establish a heating and cooling contractor business in an existing building and to provide for the construction of a one-story, 2,800 square-foot storage building (not permitted), **denied**.

**2003-AP1-002, 6345 West Thompson Road** (subject site), Waiver of the refiling rule to allow filing of a rezoning request within twelve months of a variance denial, **granted**.

**2003-UV1-025, 6345 West Thompson Road** (subject site), Variance of use and variance of development standards of the Dwelling Districts Zoning Ordinance and the Sign Regulations to provide for a heating and cooling contractors office (not permitted) with a 24 square foot illuminated wall sign and a 2,800 square foot pole barn with a five-foot side yard setback (commercial uses not permitted in a dwelling district, minimum 6-foot, 16-foot aggregate side yard setback required), and legally establish a 511.56 square foot garage with a 3.5 foot side yard setback (minimum 6-foot, 16-foot aggregate side yard setback required) resulting in 3312.30 square feet of accessory structure area or 243.98% of the main floor area of the primary building (accessory structure area may not exceed 75 percent of the total main floor area of the primary dwelling) and 3669.62 square feet of accessory use area or 270.30% of the total floor area of the primary building (accessory use area may not exceed 99.99 percent of the total floor area of the primary dwelling); **denied**.

**2003-ZON-119; 6345 West Thompson Road** (subject site), Rezoning of 0.50 acre, being in the D-3 District, to the C-1 classification, **approved**.

**2002-HOV-022;** (subject site), Variance of development standards of the sign regulations to provide for the placement of a five-foot tall sign; **approved**.

**95-UV1-52; 6345 West Thompson Road** (subject site), variance of use of the Dwelling Districts Zoning Ordinance to provide for a floral shop in an existing structure and one free standing sign, **granted**.

**80-Z-195; 6333 West Thompson Road** (subject site), Rezoning of 0.85 acre, being in the D-3 district, to the C-1 classification, to provide for a dental office, **approved**.

### **ZONING HISTORY – VICINITY**

**2019-UV1-008; 4905 Kentucky Avenue** (north of site), Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for an outdoor freezer (outdoor storage not permitted), and to legally establish a trash container in the front yard of Mooresville Road (not permitted), **granted**.

**2014-ZON-083; 6322 West Thompson Road** (northeast of site), Rezoning of 0.517 acre from the D-3 and C-4 classifications to the C-4 classification to provide for commercial development, **approved**.

(Continued)

**STAFF REPORT 2023-CAP-856 / 2023-CVR-856 (Continued)**

**2008-ZON-047; 4919 Kentucky Avenue** (west of site), Rezoning of 0.65 acre, being in the D-3 District, to the C-3 classification to provide for neighborhood commercial development, **approved**.

**2002-UV1-014; 6403 West Thompson Road** (west of site), Variance of use to provide for a welding facility in a 6,000-square foot commercial building, **granted**.

**96-UV2-85; 4902 High School Road** (east of site), Variance of use to legalize an asbestos business with the construction of a 24 by 24-foot detached storage building, **denied**.

**88-Z-273; 5021 Kentucky Avenue** (southwest of site), Rezoning of 1.22 acres from SU-18 to C-3, **approved**.

**87-Z-51, 87-Z-50, 87-Z-44; 6316, 6310, 6312 West Thompson Road 87-Z-50, 87-Z-44; 6316, 6310, 6312 West Thompson Road** (northeast of site), Rezoning from the D-3 district to the C-1 district to provide for office uses, **approved**.

**79-Z-100; 5011 Kentucky Avenue** (southwest of site), Rezoning of 0.38 acre from SU-18 to SU-42 to provide for a natural gas regulating station, **approved**.

**79-Z-105; 4904 South High School Road and 6301 West Thompson Road** (east of site), Rezoning of 1.30 acres, being in the D-3 district, to C-4 classification, to permit office use, **approved**.

**79-Z-114; 6405, 6411, and 6415 West Thompson Road** (west of site), Rezoning of 1.5 acres, being in the D-3 district, to C-1 classification, to provide for buffer between residential and commercial areas, **approved**.

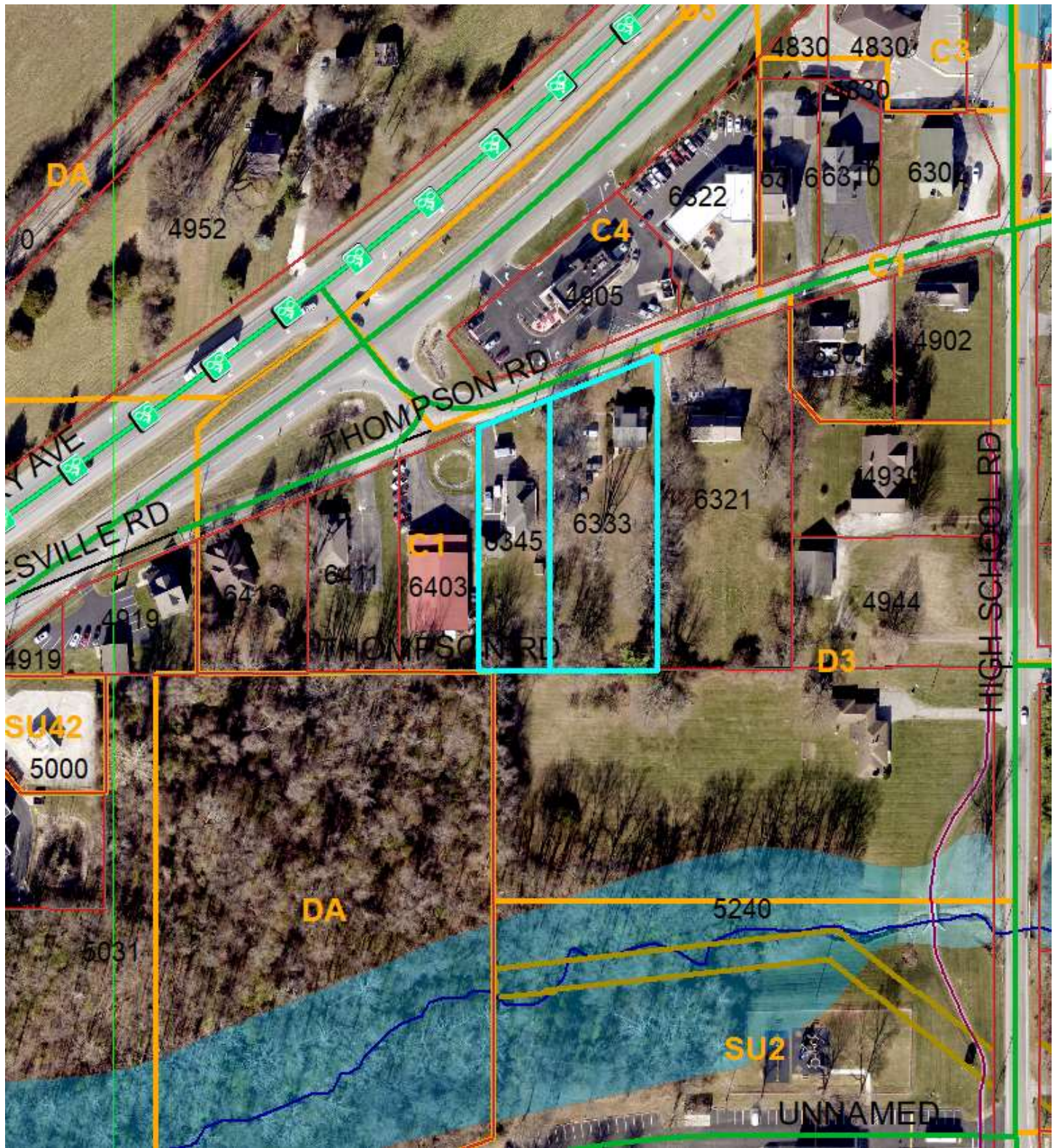
**77-UV1-42; 6322 West Thompson Road** (northeast of site), requests a variance of use to provide for a medical office, **granted**.

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**2023-CAP-856 / 2023-CVR-856; Location Map**





**MEMORANDUM OF EXAMINER'S DECISION**

**2023-CAP/CVR-856**

**6333 and 6345 W. Thompson Road**

The petitions request a modification of commitments for 2003-ZON-119 to allow for a painting business and a truck rental business (uses currently restricted to C-1 uses with no trucks heavier than one ton and no more than one truck permitted to park overnight) and a variance of use to legally establish a painting business and truck rental business.

Your Hearing Examiner visited the site prior to the hearing and noted multiple rental trucks located on the western portion of it. While a machine shop is west of the site, most of the commercial uses in the area are neighborhood commercial uses, and residential uses are south and east of the site.

The petitioner's representative described the requests as being only for office use and parking, as has been done since 2020. According to the revised plan of operation, there are four employees, and no more than eight trucks and/or trailers would be stored on the site. The representative characterized the area as transitioning from residential to commercial. The City-County Councillor submitted a letter of support.

The Decatur Township Civic Council (DTCC) remonstrated. Numerous zoning violations were cited over the last several years, along with action by City Legal. DTCC opined that heavy commercial uses should have direct access to Kentucky Avenue rather than Thompson Road, and discussed the negative impact of these uses on residents in the area.

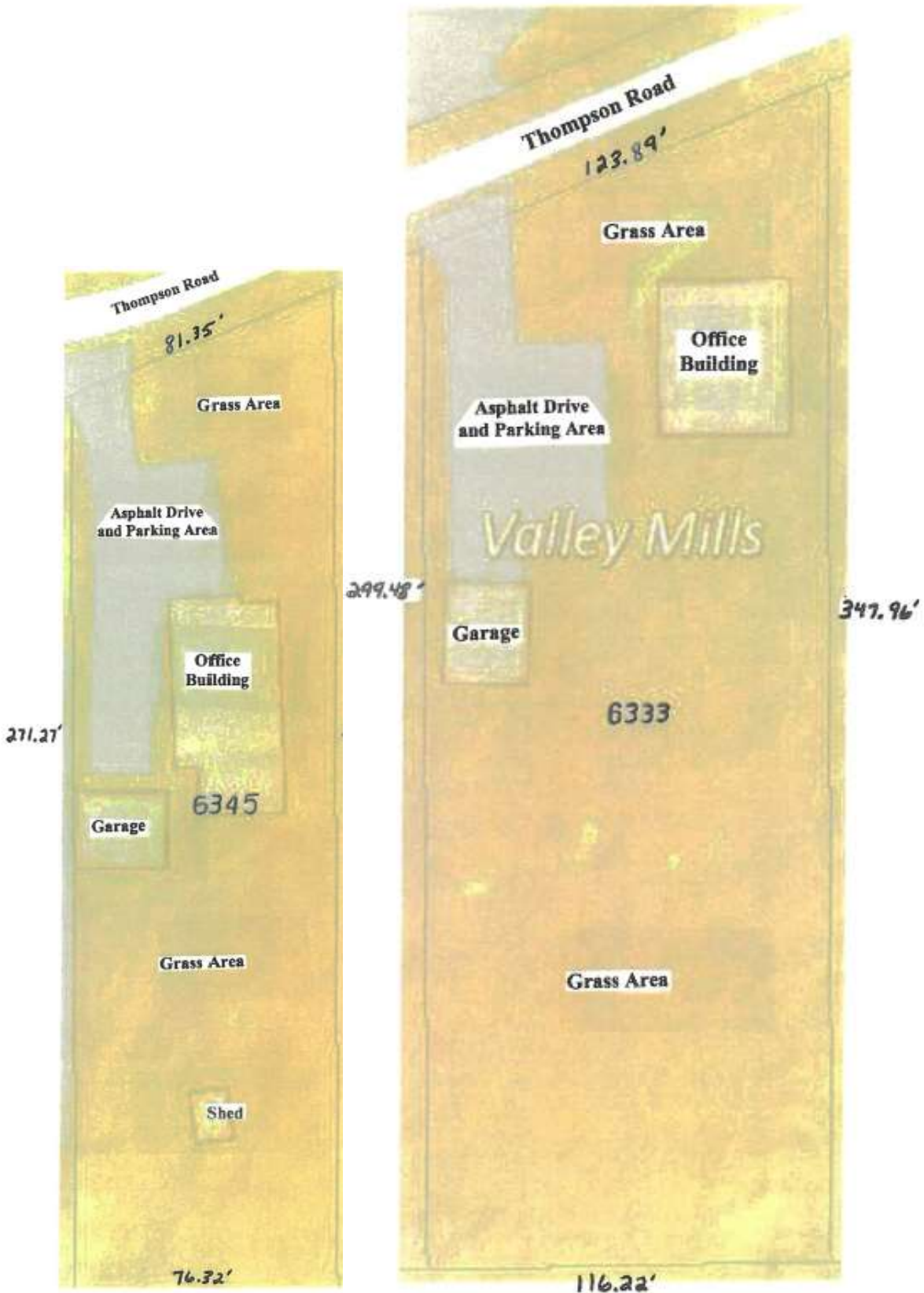
Staff stated that the current C-1 zoning district allows office use, which is an appropriate buffer between commercial uses to the west and residential uses to the east and south. Staff also stated that truck rental is considered a C-5 or C-7 use.

In your Hearing Examiner's opinion, uses permitted in the current C-1 district would be an appropriate buffer. Truck rental on the site is not compatible with residences in the area, and the proposed modification of commitments would have a negative impact on the residences. Denial of these petitions was recommended.

For Metropolitan Development Commission Hearing on December 6, 2023



# SITE PLAN



Scale  
1 = 30

PLAN OF OPERATION

6345 West Thompson Road and 6333 West Thompson Road

The primary use of the property at 6345 West Thompson Road is, and will continue to be, the operation of a commercial and residential painting business. We currently have ten (10) employees. In order to allow for additional office space and area for both painting related vehicles and equipment and U-Haul trucks and trailers, we have leased the adjoining property at 6333 W. Thompson Road. We offer and provide painting services throughout the greater Indianapolis area. We are seeking approval to offer U-Haul trucks and trailers in order to generate additional business income to supplement our painting business. Our target customer base for U-Haul trucks and trailers is the immediate surrounding neighborhood. We are requesting approval to offer U-Haul trucks and trailers at both of these properties (6345 West Thompson Road and 6333 West Thompson Road). We will have no more than a total of eight (8) trucks and/or trailers at both of these properties.

We anticipate that no additional employees will be needed due to also being able to offer U-Haul trucks and trailers for rent at these two properties because the U-Haul truck and trailer business is only being offered on a low level that is an auxiliary use of these properties to the main use, which is our painting business. Our normal business hours are from 10:00 AM to 4:00 PM, Monday through Friday. We are closed on Saturdays and Sundays.

This is primarily a service type operation and is not a product driven business, therefore no regular shipping and receiving occurs at these properties. We obtain materials from off-site vendors on an as needed basis. Waste produced by our business is no greater than that generated by typical office operations and standard weekly trash removal is adequate to avoid the accumulation of any trash or debris at these properties. We maintain general business liability insurance on our equipment and real estate.

**ATTACHMENT "C"**

**Petitioner commits to the following:**

- 1. No trucks heavier than a one ton truck will be parked on the premises**
- 2. No more than one truck will be parked overnight on the premises**
- 3. The proposed wall sign will be constructed of wood or wood appearing material and of a size of four (4) feet by six (6) feet mounted on the gable of the structure and will not be internally lighted; yet a timer will permit the sign to be lighted from lights shining onto the sign except between the hours of 11pm and 6 am daily. When Temperature Control Specialists vacates the premises, all future signs will be ground signs similar to others found further east on West Thompson Road**
- 4. The area between the existing parking area and the edge of pavement of West Thompson Road will not be expanded from the existing paved area and will be landscaped with suitable shrubbery.**
- 5. The exterior of the existing building will not be altered and will be maintained to give a more residential appearance.**
- 6. The one man barber shop will cease operation when the present operator (Fred Schmidt) vacates the building, and the owner (Jeff Malone) commits to only have C-1 Uses on the property thereafter**

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**

commercial uses are already in the area and the requested uses, an office space for a painting business and the auxiliary use of having no more than 8 U-Haul trucks and trailers on this and the adjoining property at 6333 W. Thompson Road are consistent with surrounding commercial uses.

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**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**

any action that increases the business activity in this area will increase, not impair, the value of adjacent properties.

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

the requested uses as a office space for a painting business and the incidental use of renting U-Haul trucks and trailers are not allowed in a C-1 zoning classification without Use Variances.

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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**

various commercial uses are allowed at this property and this neighborhood is transitioning from residential to commercial and retail uses. The requested two uses are only allowed with Use Variances.

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

the requested uses of office space related to a painting business and rental of U-Haul trucks and trailers is allowed in a C-1 zoning classification upon the granting of Use Variances for these two specific uses.

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**2023-CAP-856 / 2023-CVR-856; Photographs**



Photo looking south across Thompson Road at 6345 West Thompson Road.



Photo looking south across Thompson Road at 6333 West Thompson Road.



Photo looking south across Thompson Road to subject site and adjacent single-family dwelling east.





Photo of the western office façade.



Photo of the existing garage on site.





Photo of the outdoor storage of commercial vehicles on site.



Photo looking west towards the adjacent property.





Photo of the property at 6345 West Thompson Road looking north.



Photo of the property at 6333 West Thompson Road looking north.





Photo of the commercial property west of the site.



Photo looking north across Thompson Road at the commercial property.