

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-UV2-008
Address: 1718 South East Street (approximate address)
Location: Center Township, Council District #16
Zoning: C-3
Petitioner: Captain Mike's Holding Corp, by Mark and Kim Crouch
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a bar within 68 feet of a protected district (100-foot separation required) and to allow for a deck with a zero-foot front yard setback, encroaching 2.3-feet into the right-of-way of East Street (10-foot front yard setback required, encroachment into the right-of-way not permitted).

RECOMMENDATIONS

Staff **recommends denial** of this petition.

SUMMARY OF ISSUES

LAND USE

EXISTING ZONING AND LAND USE

C-3	Commercial
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SURROUNDING ZONING AND LAND USE

North -	C-3	Commercial
South -	C-3	Commercial
East -	C-3	Single-family dwelling
West -	D-5	Single-Family Dwellings

COMPREHENSIVE PLAN	The Comprehensive Plan recommends Village Mixed Use for the site.
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DEVELOPMENT HISTORY

- ◇ A previous petition, 2021-DV2-010, requested a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a 10-foot tall fence in the side and rear yards. That request was granted.

(Continued)

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VARIANCE OF USE

- ◇ This request would provide for a variance of use, for a bar to be located within 68 feet of an adjacent protected district, when the Ordinance requires a separation of 100 feet, measured in any direction. The purpose of the separation requirement is to provide a buffer between land uses, when one land use is more intense and more impactful. Without the required 100-foot buffer, the impact upon the less intense uses, such as the residential neighborhood uses to the east and west, would be detrimental and injurious to the overall community.
- ◇ The strict application of the terms of the zoning ordinance does not constitute a practical difficulty for the property, since the site is zoned C-3 and could be used for any number of uses permitted, by right, including a restaurant as previously used, in the C-3 zoning classification without the need for a separation variance. Any practical difficulty is self-imposed by the desire to use the site for a bar within 68 feet of a protected district.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The petitioner has indicated the request for a 2.3-foot encroachment into the right of way was a typographical mistake made by the petitioner and will be amending the request to provide for a 6.5-inch encroachment into the right-of-way.
- ◇ Setbacks are required to keep a minimum distance between property improvements and help reduce drainage overflows onto adjacent properties. Additionally, setbacks provide the required space needed to construct and maintain structures on a property without requiring access through adjacent properties.
- ◇ The Ordinance requires a 10-foot front setback for the subject site. The site was zoning compliant prior to the installation of the deck. The deck was recently installed without permits.
- ◇ The grant of the request would be injurious to the safety and general welfare of the community by imposing the elevated deck structure with a zero-foot front setback and encroaching approximately 6.5 inches into the right-of-way.
- ◇ The strict application of the terms of the zoning ordinance would not result in practical difficulties in the use of the property because the site was zoning compliant previously without the need for the elevated deck as constructed. The addition of the deck is not a requirement of the Ordinance, and the structure would be ordinance compliant without the need for a variance, with the removal of the deck as proposed.
- ◇ Staff does not support variance requests to retroactively correct zoning violations created due to the lack of due diligence. Furthermore, the property owner did not file for a structural permit prior to illegally constructing the deck with the approximate 6.5-inch encroachment into the right-of-way.

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- ◇ No peculiar condition exists on site for staff to be supportive of the request. Instead, this is a self-imposed difficulty as a result to expand a proposed bar use onto the entire site. The site can be used as permitted by the Ordinance without the reduced front setback, or the encroachment into the right-of-way, and without the need for the requested variances.

GENERAL INFORMATION

THOROUGHFARE PLAN	This portion of South East Street is indicated as a primary arterial on the Official Thoroughfare Plan, with a 25-foot existing and proposed half right-of-way.
SITE PLAN	File-dated June 8, 2023
FINDINGS OF FACT	File-dated June 8, 2023

ZONING HISTORY

2022-UV2-028; 1634 South East Street (north of site), requested a variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for a bar within 22 feet and 75 feet of protected districts, **denied**.

2021-DV2-010; 1718 South East Street (subject site), requested a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a 10-foot tall fence in the side and rear yards, **granted**.

2019-DV3-024; 1628 South East Street (north of site), requested a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a real estate office, with accessory storage, with five parking spaces, and with maneuvering within the rear transitional yard, **granted**.

2018-AP3-001; 1628 South East Street (north of site), requested a waiver of the Refiling Rule to permit the refiling of a variance petition less than 12 months after the denial of 2018-DV3-009 on April 17, 2018, **granted**.

2018-DV3-009; 1628 South East Street (north of site), requested a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for an office / warehouse building, with 80% accessory use area, with six parking spaces provided, with deficient size and maneuvering area, with parking conflicting with a loading area, **denied**.

2018-DV1-025; 1531 South East Street (north of site), requested a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legally establish a retail building, with four parking spaces, three of which are substandard, without a van handicapped parking space, and with a zero-foot east transitional yard without landscaping, **granted**.

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2018-UV1-017; 1529 South East Street (north of site), requested a variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for primary and accessory residential uses, including a single-family dwelling and a detached garage, **granted**.

2018-CZN-821; 1526 South East Street (north of site), requested the rezoning of 0.13 acre from the C-1 district to the D-5 district; **approved**.

2017-HOV-082; 1434 South East Street (north of site), requested a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a front porch roof, with a front setback of five feet, **granted**.

2017-ZON-016; 1401, 1425, 1441, 1460, 1462, 1464, 1502, 1816 and 1827 South East Street; 828 Beecher Street; 306, 310, 318, 322, 329, 353 and 401 Lincoln Street; 510 East Morris Street; 1538, 1542, 1551 and 1555 South New Jersey Street; 438 Orange Street; 445 and 446 Parkway Avenue (includes sites to the north and south), requested the rezoning of 1.95 acres, from the C-1, C-3, C-5 and I-4 districts, to the D-5 classification, **approved**.

2014-UV2-003; 1537 South East Street and 516 Lincoln Street (north of site), requested a variance of use and development standards of the Commercial Zoning Ordinance to provide for commercial space and two dwelling units; and to legally establish an existing building, with a zero-foot front setback along East Street and Lincoln Street being within the clear sight triangle of said streets; a parking area with a zero-foot front setback; five parking spaces, with maneuvering within the right-of-way of Lincoln Street; without a landscape buffer along the frontage of both streets; and to provide for two stoops, with steps and a handicapped ramp encroaching approximately four to five feet, respectively into the right-of-way of Lincoln Street, **granted**.

2004-UV2-035; 1721 South East Street (south of site), requested a variance of use of the Commercial Zoning Ordinance to legally establish an existing 985.25-square foot single-family home, **granted**.

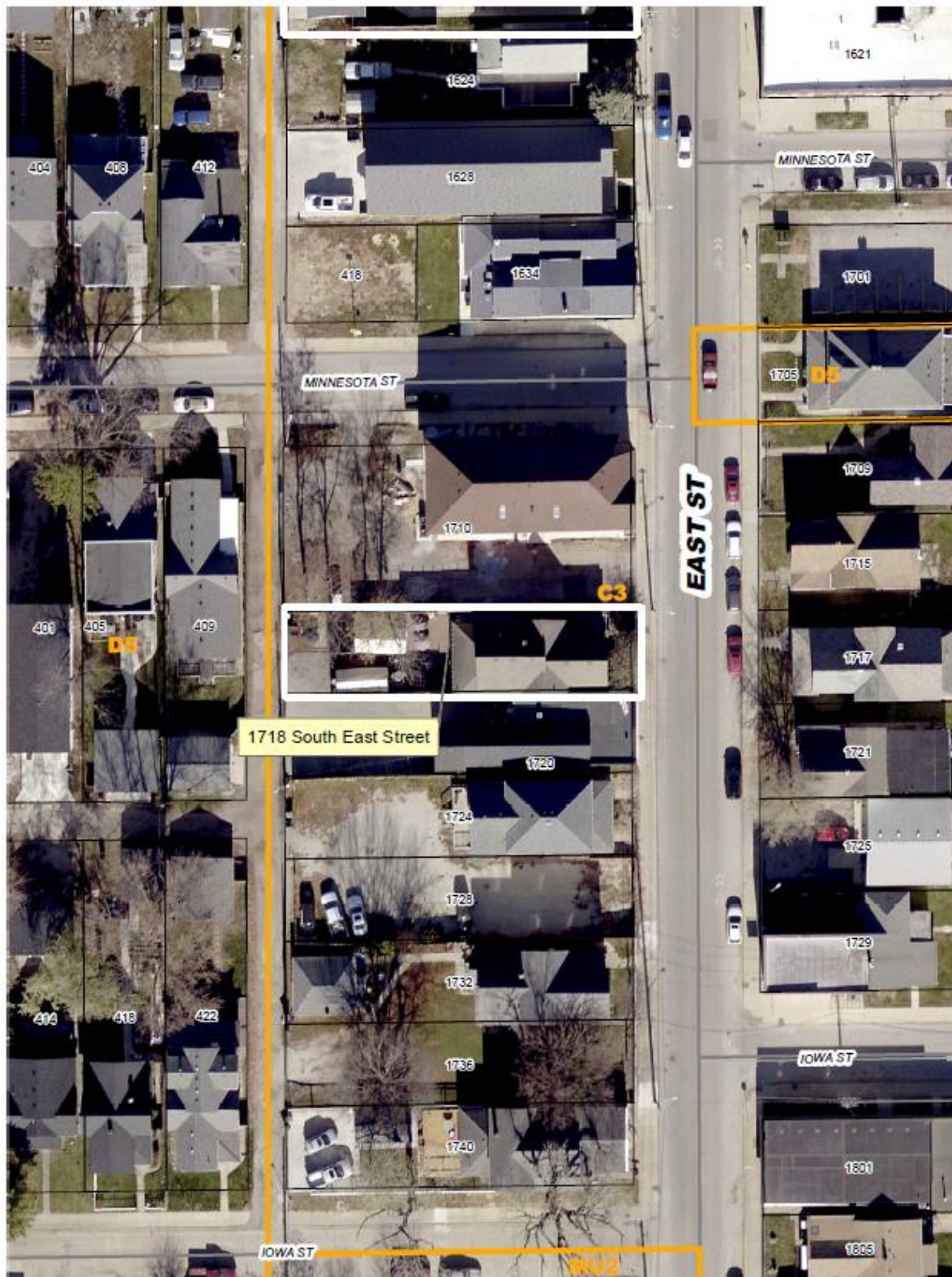
97-UV3-21; 1531 South East Street (north of site), requested a variance of use of the Commercial Zoning Ordinance to permit for the manufacture, display, and sale of kitchen countertops and other laminated products in the existing building, with off-street parking, **granted**.

96-UV1-101; 1632-1634 South East Street and 422-424 east Minnesota Street (north of site), requests a variance of use of the Commercial Zoning Ordinance to provide for three dwelling units in an existing structure and an office use, in C-3, **approved**.

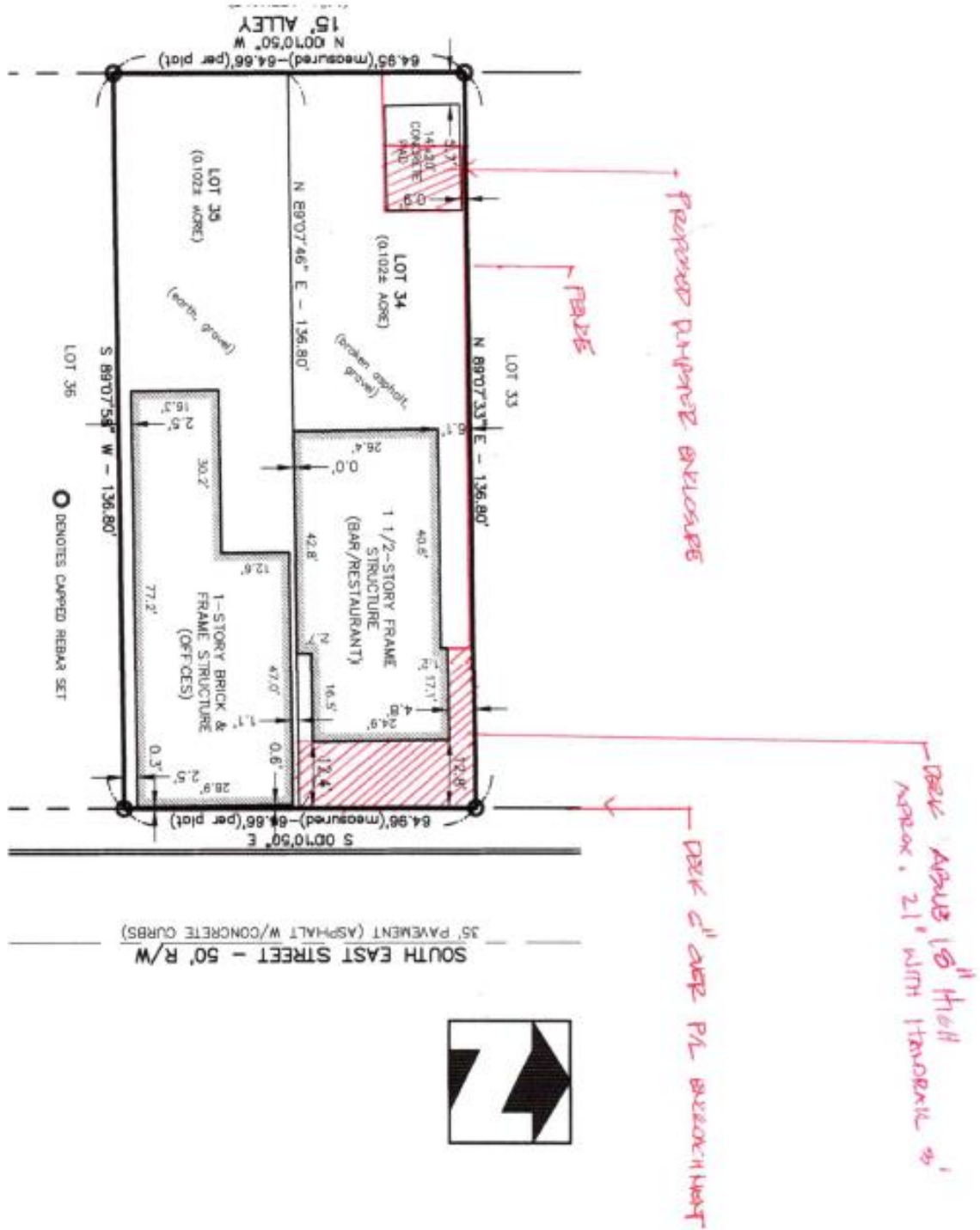
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2023-UV2-008; Location Map



2023-UV2-008; Site Plan



2023-UV2-008; Photographs



Subject site looking west.



Subject site deck looking south, with a zero-foot front yard setback, encroaching approximately 6.5 inches into the right-of-way of East Street



Adjacent residential protected district approximately 68 feet to the west.



Adjacent commercial use to the north, looking west



Adjacent residential uses to the east, zoned commercially.



Adjacent commercial use to the south, looking west