



**METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER**

**August 15, 2024**

**Case Number:** 2024-ZON-071  
**Property Address:** 1302 East Stop 11 Road  
**Location:** Perry Township, Council District #23  
**Petitioner:** HRE Brothers, LLC, by Michael Rabinowitch  
**Current Zoning:** D-A  
  
**Request:** Rezoning of 1.788 acres from the D-A district to the C-3 district to provide for a restaurant and other commercial uses.  
**Current Land Use:** Single-family dwelling  
**Staff Recommendations:** Denial  
**Staff Reviewer:** Kathleen Blackham, Senior Planner

**PETITION HISTORY**

The Hearing Examiner continued this petition from the July 11, 2024 hearing, to the August 15, 2024 hearing, at the request of the petitioner's representative.

No new information has been submitted to the file. Staff continues to recommend denial.

**STAFF RECOMMENDATION**

Denial. If approved staff would request that approval be subject to the following commitment being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptacles provided for the proper disposal of trash and other waste.
2. A 56-foot half right-of-way shall be dedicated along the frontage of East Stop 11 Road, as per the request of the Department of Public Works (DPW), Engineering Division. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of all grants of right-of-way by the DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).

## PETITION OVERVIEW

This 1.788-acre site, zoned D-A, is developed with a single-family dwelling. It is surrounded by a single-family dwelling to the north, zoned D-A; single-family dwellings to the south, across East Stop11 Road, zoned D-3; a single-family dwelling to the east, zoned D-A; and commercial uses to the west, zoned C-4.

Petitions 2007-ZON-055 and 2009-ZON-065 requested rezoning to commercial uses and both were withdrawn. Petition 2018-UV2-004 requested a variance of use for commercial uses and signage. This petition was denied.

## REZONING

This request would rezone the site from a residential use to the C-3 (neighborhood commercial) district. "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 Comprehensive Plan recommends suburban neighborhood typology. Since at least 1988 (US 31 and South Madison Avenue Corridor Plan), this site has been recommended for residential uses.

Only small-scale office, retailing and personal or professional services are recommended commercial uses within the suburban neighborhood. The Pattern Book defines small-scale uses on lots less than 1.5 acres with minimal outdoor operations, storage or display. Additional guidelines state that these uses be located at the intersections of arterial streets and no closer than one mile to another commercial node, limited to an aggregate of 3.5 acres per intersection, adequate space for required screening and buffering, and no outdoor display of merchandise.

As proposed, a 10,150-square-foot building, 51 parking spaces and a 30-foot by 60-foot greenhouse would introduce an intense commercial use into the neighborhood that would be wholly inappropriate.

Commercial development of the site would alter and negatively impact the residential character of Oak Drive and the adjoining neighborhoods. It would introduce noise and traffic into the established residential aesthetic. Due to the development of the surrounding neighborhoods, and the street pattern of the area, it is unlikely that this request would primarily serve those residents that would be most impacted by the proposed development.

Furthermore, rezoning of any of the properties east of the existing commercial corridor on Madison Avenue to any commercial classification would only lead to further commercial rezoning requests or variances along this portion of East Stop 11 Road, which would be contrary to the Comprehensive Plan recommendation, as well as the recommended guidelines in The Pattern Book.

Within this massive commercial retail corridor along US 31 and Madison Avenue, vacancies abound in existing structures that are zoned and developed appropriately for commercial uses. Reuse and redevelopment would be much more desirable than expanding commercial use to the east and encroaching into a well-established neighborhood.

### **Department of Public Works**

The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 56-foot half right-of-way along East Stop 11 Road. This dedication would also be consistent with the Marion County Thoroughfare Plan.

### **Environmental Public Nuisances**

The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.

All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.

Environmental public nuisance means:

1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;

3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

**GENERAL INFORMATION**

<b>Existing Zoning</b>	D-A		
<b>Existing Land Use</b>	Single-family dwelling		
<b>Comprehensive Plan</b>	Suburban Neighborhood		
<b>Surrounding Context</b>	<b><u>Zoning</u></b>	<b><u>Land Use</u></b>	
	North:	D-A	Single-family dwelling
	South:	D-3	Single-family dwellings
	East:	D-A	Single-family dwelling
	West:	C-4	Commercial uses
<b>Thoroughfare Plan</b>			
East Stop 11 Road	Secondary Arterial	Existing 96-foot right-of-way and proposed 112-foot right-of-way.	
<b>Context Area</b>	Metro		
<b>Floodway / Floodway Fringe</b>	No		
<b>Overlay</b>	No		
<b>Wellfield Protection Area</b>	No		
<b>Site Plan</b>	June 3, 2024		
<b>Site Plan (Amended)</b>	N/A		
<b>Elevations</b>	N/A		
<b>Elevations (Amended)</b>	N/A		
<b>Landscape Plan</b>	N/A		
<b>Findings of Fact</b>	N/A		
<b>Findings of Fact (Amended)</b>	N/A		
<b>C-S/D-P Statement</b>	N/A		

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- The Comprehensive Plan recommends Suburban Neighborhood typologies. 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.

### Pattern Book / Land Use Plan

The Comprehensive Plan consists of two components that include the Pattern Book and the land use map. The Pattern Book provides a land use classification system that guides the orderly development of the county and protects the character of neighborhoods while also being flexible and adaptable to allow neighborhoods to grow and change over time.

The Pattern Book serves as a policy guide as development occurs. Below are the relevant policies related to this request:

- *Conditions for All Land Use Types*
  - All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
  - All development should include sidewalks along the street frontage.
  - Hydrological patterns should be preserved wherever possible.
  - Curvilinear streets should be used with discretion and should maintain the same general direction.
  - In master-planned developments, block lengths of less than 500 feet, or pedestrian cut-throughs for longer blocks, are encouraged.

Only small-scale office, retailing and personal or professional services are recommended commercial uses within the suburban neighborhood. The Pattern Book defines small-scale uses on lots less than 1.5 acres with minimal outdoor operations, storage or display. The proposed use would present large-scale office, retailing and personal or professional services and expansion of a regional commercial use into the living typology to the east and south.

### 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)

- The Marion County Thoroughfare Plan (2019) “is a long-range plan that identifies the locations classifications and different infrastructure elements of roadways within a defined area.”
- The following listed items describes the purpose, policies and tools:
  - Classify roadways based on their location, purpose in the overall network and what land use they serve.
  - Provide design guidelines for accommodating all modes (automobile, transit, pedestrians, bicycles) within the roadway.
  - Set requirements for preserving the right-of-way (ROW)
  - Identify roadways for planned expansions or new terrain roadways
  - Coordinate modal plans into a single linear network through its GIS database

## ZONING HISTORY

**2018-UV2-004; 1302 East Stop 11 Road (subject site)**, requested a variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a nail/pedicure salon within the attached breezeway and garage, including a future expansion, with driveway improvements and a parking lot with an 11-foot west side setback and with a neon-trimmed, 32-square foot freestanding sign, **denied**.

**2009-ZON-065; 1302 East Stop 11 Road (subject site)**, requested the rezoning of two acres, from the D-A District to the C-3C classification to provide for corridor commercial uses, **withdrawn**.

**2007-ZON-055; 1302 East Stop 11 Road and 7934 South Oak Drive (includes subject site)**, requested the rezoning of 2.78 acres, from the D-A District to the C-3 classification to provide for neighborhood commercial uses, **withdrawn**.

### Vicinity

**2007-UV2-020; 1240 East Stop 11 Road (west of site)**, requested a variance of use and development standards of the Commercial Zoning Ordinance to provide for the sale, rental and leasing of automobiles, and to provide for 4,230 square feet of non-accessory outdoor display areas not located adjacent to a building, **granted**.

**2003-ZON-137; 8003 South US 31 (southwest pf site)**, requested rezoning of 1.14 acre from C-4 to C-5, **approved**.

**90-UV2-117; 1712 East Stop 11 Road (east of site)**, requested a variance of use of the Dwelling District Zoning Ordinance to permit the operation of a travel agency within an existing single-family home, **denied**.

**88-UV2-26; 1712 East Stop 11 Road (east of site)**, requested a variance of use to permit the conversion of a residence to a commercial office, **denied**

**86-UV2-83; 1712 East Stop 11 Road (east of site)**, requested a variance of use to permit the conversion of a residence to a commercial office, **denied**

**83-HOV-8; 7934 Oak Drive (east of site)** requested a variance of development standards of the Agricultural Zoning Ordinance, to provide for the location of residential garage, with a reduced front setback from Oak Drive, **granted**.

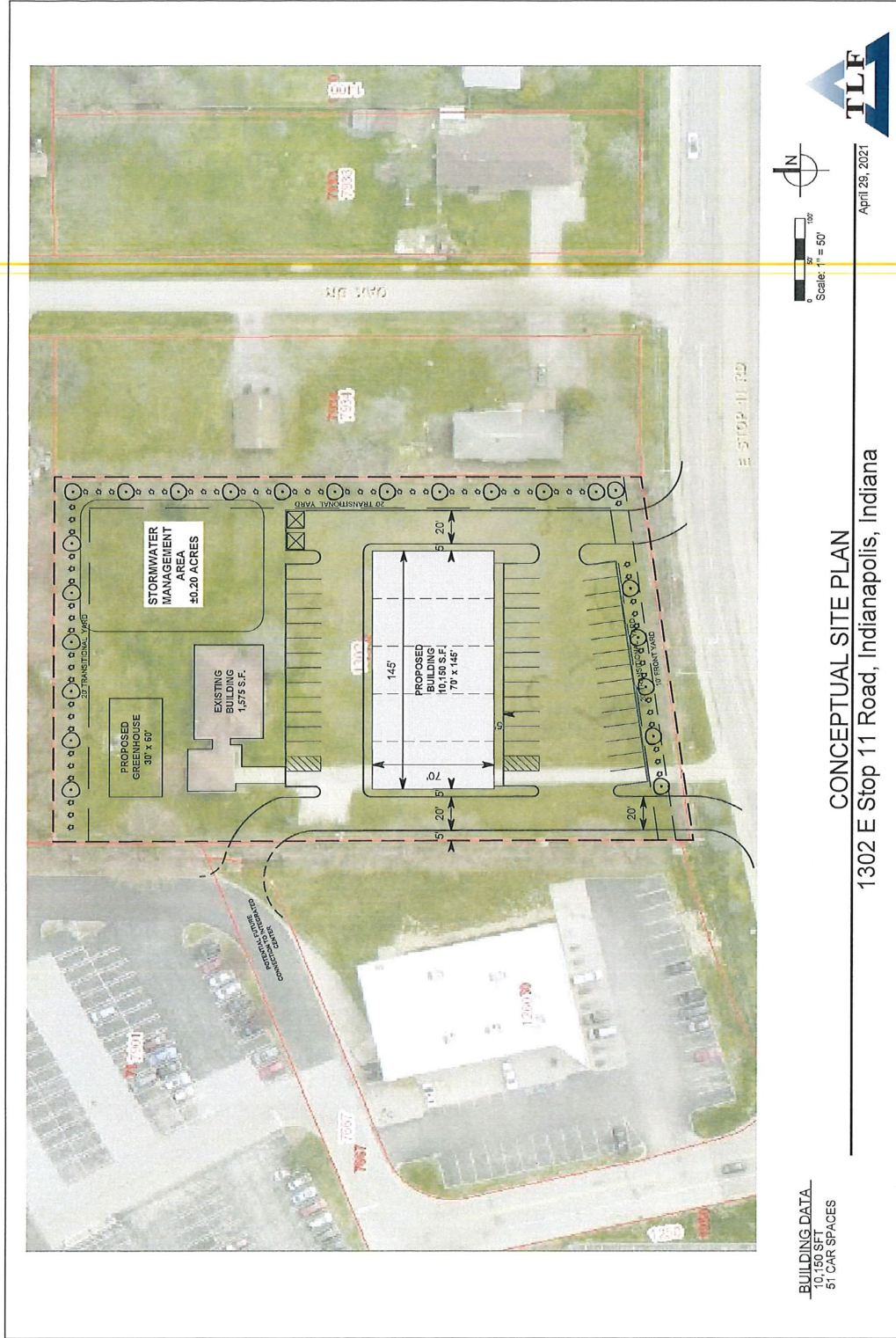
EXHIBITS



1302 East Stop 11 Road

00.00 0.01 0.02 0.03 0.04 Miles







View looking west along East Stop 11 Road



View looking east along East Stop 11 Road



View of site looking northeast across East Stop 11 Road



View of site looking north across East Stop 11 Road



View of site looking north across East Stop 11 Road



View of site looking west across Oak Drive