

**BOARD OF ZONING APPEALS DIVISION I**

September 3, 2024

**Case Number:** 2024UV1012  
**Property Address:** 35 North Lynhurst Drive (approximate address)  
**Location:** Wayne Township, Council District #16  
**Petitioner:** MSI LYNHURST INDIANAPOLIS GROCERY LLC,%RAMIN POURTEYMOUR, by Thomas Pottschmidt  
**Current Zoning:** C-3  
**Request:** Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a wholesale operation within an existing building (not permitted).  
**Current Land Use:** Commercial  
**Staff Recommendations:** Staff recommends **approval** of the variance subject to commitments.  
**Staff Reviewer:** Michael Weigel, Senior Planner

**PETITION HISTORY**

This is the first public hearing for this petition.

**STAFF RECOMMENDATION**

Staff recommends **approval** of the variance subject to commitments specifying that: (a) all operations shall be conducted internally and no portion of the site would be utilized for outdoor storage, sales, or display; (b) no fencing shall be installed around the perimeter of the parking area; and (c) trees shall be planted along the western frontage (Lynhurst) between the two existing outlots consistent with requirements from 744-504 of the Indianapolis Zoning Ordinance.

**PETITION OVERVIEW**

- The subject site is currently improved with a commercial structure that contains several smaller commercial tenants on the southern portion of the building addressed 5224 Rockville Road (liquor store, barbershop, restaurant, cell phone sales) with the larger northern portion vacant (having formerly housed a grocery store). There are two out lots on the western portion of the property that contain a gas station (northern) and a vacant bank (southern). Adjacent properties are improved with a discount store and residences (west), a nightclub (north), a bank and utility site (east), and a church, barbershop, and legal offices (south).

- The structural permit STR23-02634 was issued to allow for internal conversion of the vacant northern portion of the subject building to allow for a 'warehouse' in November of 2023. The permit was placed into abeyance one month later when it was realized that neither warehousing nor wholesaling (the true use) would be allowed within C-3 zoning absent a variance. This petition would allow for wholesaling within the existing building.
- The subject site contains existing off-street parking and loading spaces beyond what would be required for the proposed use by ordinance. However, grant of this variance would not legalize any signage placed onto the building without permits in place and would not allow for any changes to the western façade of the existing building that would reduce the transparency below standards required by 742-104.C.4 of the ordinance.
- This property is zoned C-3 (Neighborhood Commercial) to allow for an extensive range of retail sales and personal, professional, and business services required to meet the demands of a fully developed neighborhood, regardless of its size. It does not allow for businesses whose primary audience is well beyond the neighborhood boundary and does not allow for businesses that require outdoor display or storage. Similarly, the Comprehensive Plan recommends the site to the Community Commercial typology to allow for low-intensity commercial and office uses that serve nearby neighborhoods from either freestanding building or small integrated centers. Light industrial land uses (such as wholesaling) are not a contemplated land use for this typology.
- The operation plan provided by the applicant indicates the business would have 4 employees on-site during hours of operation (10a-8p most days) and would anticipate servicing 15 customers simultaneously at a maximum. It also indicates that the existing dumpster and loading spaces would be utilized and that trucks would drop off merchandise weekly during normal business hours. While the plan doesn't specify products for sale beyond confirming there would be no hazardous materials on-site, their webpage indicates products might include "disposable products, medicines, candy, t-shirts, lighters, energy drinks, soft drinks, rolling papers, glass accessories, vapes, novelty items, snacks, chips and incense".
- The findings of fact included with the submittal indicate that this use would be 'mercantile' in a similar manner to the previous occupant and increase adjacent property values through improving the vacant site. Staff agrees and would note that (a) the Use Table of the zoning ordinance does include some allowances for reuse of large vacant buildings for alternate use categories that might not be contemplated otherwise and (b) it is unlikely that the proposed use would generate intensity of traffic above the previous grocery store tenant. Given this context, staff would recommend approval of the petition with three limiting commitments.
- To allow for the development to maintain C-3 characteristics and prevent the appearance of a more intense commercial or industrial use, approval should be conditioned upon keeping all operations internal, preventing placement of perimeter fencing around the parking, and the addition of some frontage landscaping along Lynhurst. The petitioner has expressed agreement with the proposed commitments.

## GENERAL INFORMATION

<b>Existing Zoning</b>	C-3	
<b>Existing Land Use</b>	Commercial	
<b>Comprehensive Plan</b>	Community Commercial	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
	North:	North: Commercial
	South:	South: Commercial/Religious
	East:	East: Commercial/Vacant
	West:	West: Commercial/Residential
<b>Thoroughfare Plan</b>		
Lynhurst Drive	Primary Arterial	100-foot existing right-of-way and 88-foot proposed right-of-way
Rockville Road	Primary Arterial	105-foot existing right-of-way and 95-foot proposed right-of-way
<b>Context Area</b>	Compact	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	No	
<b>Wellfield Protection Area</b>	No	
<b>Site Plan</b>	07/13/2024	
<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>	07/13/2024	
<b>Findings of Fact (Amended)</b>	N/A	

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book

### Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Community Commercial working typology to allow for low-intensity commercial and office uses that serve nearby neighborhoods. These uses are usually in freestanding building or small integrated centers. Examples include small-scale shops, personal services, professional and business services, grocery stores, drug stores, restaurants, and public gathering spaces.
- Wholesaling would be considered a Light Industrial land use type by the Comprehensive Plan which is not a contemplated use for the Community Commercial typology.



**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)

- Not Applicable to the Site.

## ZONING HISTORY

### ZONING HISTORY – SITE

N/A

### ZONING HISTORY – VICINITY

**2012HOV048 ; 111 N Lynhurst Drive (north of site)**, Variance of development standards of Commercial Zoning Ordinance to provide for a nightclub, with outdoor seating, within 39 feet of a protected district (100-foot separation for nightclubs required), **approved**.

**2006ZON038 ; 5212 Rockville Road (east of site)**, rezoning of 1.683 acres, from the SU-35 District, to the C-3 classification to provide for neighborhood commercial uses, **approved**.

**2004LNU033 ; 5233 Rockville Road (south of site)**, legally establish a second single-family dwelling unit on a single parcel, **denied**.

**2004DV3038 ; 5332 Rockville Road (west of site)**, variance of development standards of the Commercial Zoning Ordinance to provide for a drug store with a pharmacy drive-through with one stacking space before the final drive-through service component (minimum three stacking spaces before the final service component required), and a 6.24 landscaped strip along Lynhurst Drive (minimum ten-foot wide landscape strip required), **approved**.

**95-Z-163 ; 5206 Rockville Road (east of site)**, rezoning of 13.63 acres to SU-35, **approved**.

**95-UV1-114 ; 5304 Rockville Road (west of site)**, variance of use of the Commercial Zoning Ordinance to provide for the reuse of an existing building for automobile repair and maintenance service (not permitted), **approved**.

**94-V3-107 ; 5301 Rockville Road (southwest of site)**, variance of development standards of the Commercial Zoning Ordinance to provide for the construction of a convenience store and gas station, with a 6 foot landscape strip along Rockville Road, a 4 foot landscape strip along the corner/intersection of Rockville Road and Lynhurst Drive and a 6 foot landscape strip along Lynhurst Drive (minimum 10 foot landscape strip required for each street frontage), **approved**.

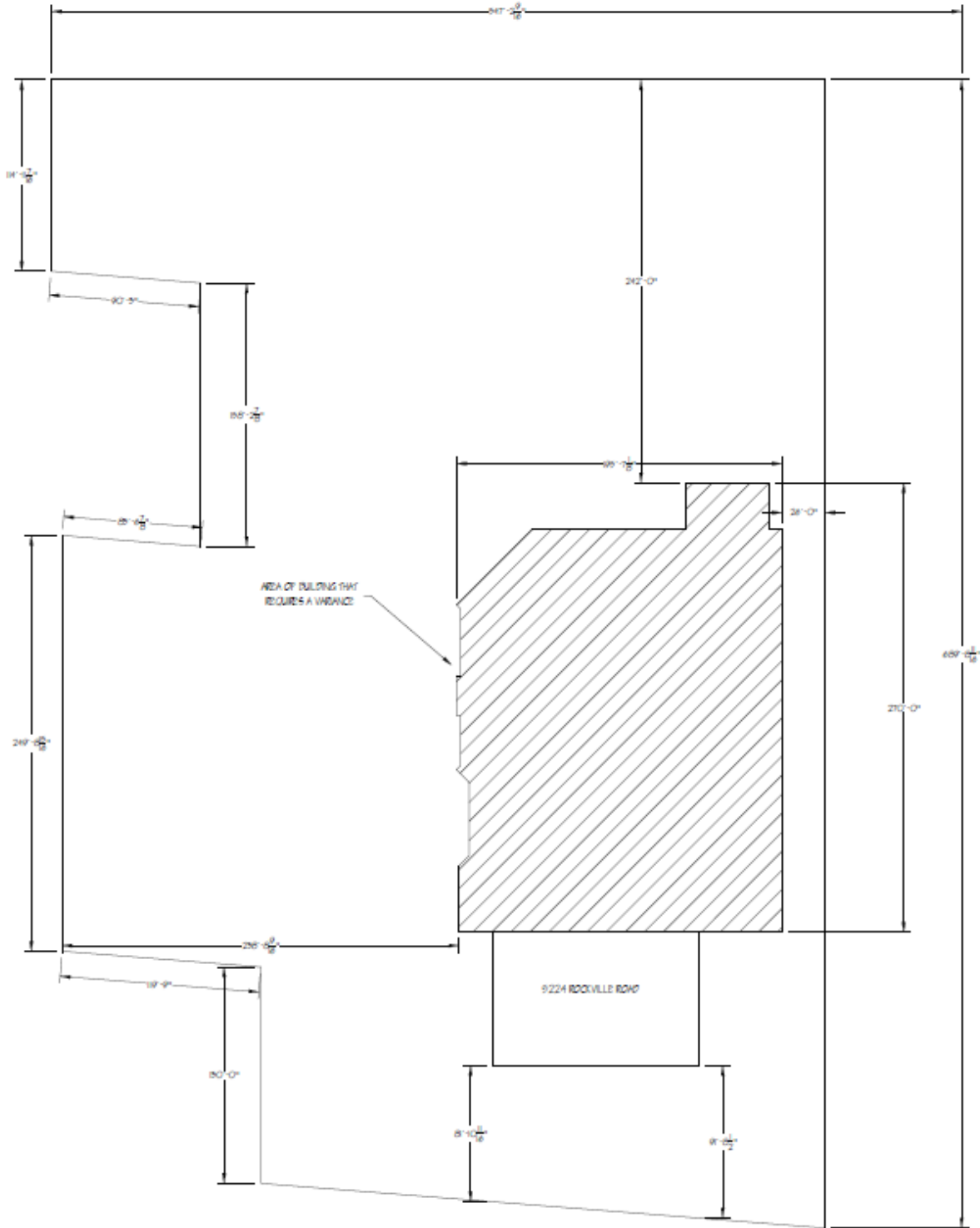
**93-UV1-78 ; 5332 Rockville Road (west of site)**, variance of use and development standards of the Commercial Zoning Ordinance to provide for the sale of automobile parts including the installation of glass and tires with 12 parking spaces (28 parking spaces required) and a gravel drive (hard-surfacing required), **approved**.

**EXHIBITS**

**2024UV1012 ; Aerial Map**



**2024UV1012 ; Site Plan**



## **2024UV1012 ; Plan of Operation**

### **Workforce:**

Typically, there will be two cashiers and two stockkeepers. The hours of operation are:

M-Sat: 10 a.m. to 8 p.m.

Sun: 12 p.m. to 8 p.m.

### **Clients and Customers:**

Customers are from the general population and can be from all different backgrounds. They typically park on site although there are some customers within walking distance. There could be upwards of 15 customers at a time depending on the day and hour.

### **Processes Conducted on Site:**

The store requires stocking of all items that they will sell. A cashier is required at all hours of operation. There are cameras located by the cashier and throughout the building.

### **Materials Used:**

There are no hazardous materials on site.

### **Shipping and Receiving:**

Usually, a semi-truck is sent to the store that contains our order of stock. We stock during the day at all hours from 9 a.m. to 5 p.m. Depending on the order it can take an hour to unload the truck. We have orders come about once a week. There are existing loading docks that can accommodate a semi-truck.

### **Waste:**

The waste generated from the store is minimal as the cardboard boxes are recycled. Waste is handled with trash bags and taken out to the dumpster by non-cashier employees.



**2024UV1012 ; Finding of Fact**

**1. THE GRANT WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY BECAUSE**

There is nothing associated with this variance that would harm anyone in the community. This was previously a Marsh Supermarket and it's vacancy has caused much vandalism to the structure. It would benefit the community in every way if this building was no longer vacant. Certainly this variance is not immoral.

**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**

Actually, it is our belief that the values of the adjoining properties will increase in value as this building will become a occupied. As mentioned above, much vandalism has occurred and having it occupied would bring the general public to the area. This would increase traffic and other businesses would benefit.

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

This was a Marsh Supermarket and had busy retail traffic. The current zoning allows for a retail business but the applicant desires to make this a wholesale business which is not covered under its current zoning. In reality, there will not be any noticeable change for anyone driving by the facility versus what it once was.

**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**

This building has been vacant for a very long time and thus has been very undesirable to the surrounding properties. If this building does not get this variance approved it could take many more years for another tenant to occupy it.

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

This building was mercantile when it was a Marsh Supermarket. It will remain mercantile if this variance is approved. Therefore, there will be no interference with the comprehensive plan of the community. In the end, many in the community would appreciate this building being used for the betterment of the surrounding area.

**2024UV1012 ; Photographs**



Photo 1: Subject Property Viewed from West



Photo 2: Subject Property Viewed from South

**2024UV1012 ; Photographs (continued)**



Photo 3: Subject Property + Loading Docks Viewed from North



Photo 4: Subject Property + Dumpster Viewed from Southeast

**2024UV1012 ; Photographs (continued)**



Photo 5: Existing Outlot on Northwestern Section of Site



Photo 6: Existing Outlot on Southwestern Section of Site

**2024UV1012 ; Photographs (continued)**



Photo 7: Adjacent Property to North



Photo 8: Adjacent Property to West

**2024UV1012 ; Photographs (continued)**



Photo 9: Adjacent Property to South



Photo 10: Adjacent Property to East