

BOARD OF ZONING APPEALS DIVISION I

September 3, 2024

Case Number: 2024UV1015
Property Address: 3402 Georgetown Road (approximate address)
Location: Wayne Township, Council District #5
Petitioner: Georgetown Parcel I LLC, by Thomas Potts Schmidt
Current Zoning: C-3 (FF)

Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the expansion of an existing liquor store (not permitted) within nine feet of a protected district (100-foot separation, 20-foot transitional yard required) with zero-frontage trees and deficient landscaping (eight trees, landscaping required) and 12 parking spaces and zero bicycle parking spaces provided (14 spaces, three bicycle spaces required).

Current Land Use: Commercial

Staff

Recommendations: Staff recommends **denial** of the request.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of the request.

PETITION OVERVIEW

- The subject site is located at the northwest corner of the intersection of 34th and Georgetown and is currently improved with a liquor store with a building area of 3380 square feet. The property is surrounded by fueling stations to the south and east and multitenant commercial development to the north and west. It is also directly adjacent to D-5 residential zoning to the north and northwest.
- In 1988, the property was rezoned from D-4 to C-3 to allow for the package liquor store use (allowed by-right within C-3 at the time but disallowed under current ordinance). Any expansion of the legally non-conforming use would require a variance of use as well as compliance with applicable use-specific standards (proximity to protected districts, placement of cameras, cash registers, and trash receptacles, etc.).

- The proposed site plan provided with this application indicates an expansion of the existing use to a building area of 4965 square feet. In addition to requiring a use variance for the expansion of the non-conformity and its proximity to a protected district, variances of development standards would also be required for the required transitional yard separation as well as deficient existing landscaping and amounts of vehicle and bicycle parking.
- Available aerial and street-level photography and testimony from a concerned neighbor indicate that this site may also house the accessory use of outdoor seasonal produce sales. The area utilized for this potential use would likely be the southeastern portion of the site nearest to the intersection and that a trailer stored on the western portion of the property may also be affiliated. Staff would note that such a use could be cited for a zoning violation if it did not meet the standards of 744-306.S within the ordinance and may have an impact on maneuverability and availability of parking at the subject site.
- 3402 Georgetown Road is zoned C-3 (Neighborhood Commercial district) to allow for 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. Similarly, the Comprehensive Plan recommends it to the Community Commercial typology to allow for low-intensity commercial and office uses that serve nearby neighborhoods.
- Additionally, most of the property is located both within a 100-year floodplain (floodway fringe) as well as being within an Environmentally Sensitive Area overlay as defined by the Comprehensive Plan. The Plan recommends that development of this land use type should either preserve or add at least 20% of the entire parcel as tree canopy or naturalized area.
- The plan of operation provided for this business by the applicant indicates that the business would be open until 2 to 3 am on most nights and that it would be staffed by one cashier and 2 stockers. Sales of both cold and warm package liquor would be conducted typically to one customer at a time, and weekly deliveries would be made by a “mid-sized” truck. No hazardous materials would be on-site, and the existing dumpster to the northwest would be utilized for waste. No mention of outdoor seasonal produce sales was made.
- Findings of fact provided by the applicant indicate that the use would beautify and present no harms to surrounding properties while allowing the business to sell additional alcohol within a less cramped space, and that no additional landscaping should be required since the site hasn’t historically been landscaped. Staff disagrees that a proposal with such deficiencies in landscaping would constitute substantial beautification and does not feel that an appropriate remedy for the small lot size would be development in even closer proximity to residential areas and zonings. Staff also disagrees that a lack of landscaping at the site in the past constitutes a substantial site-specific practical difficulty given that the ordinance has specific exemptions for landscaping rules at previously developed sites that would not be applicable here.
- While the liquor store use was allowed by-right in 1988 at the time of rezoning, approval of this variance would constitute a dramatic expansion of the currently non-conforming use in a manner

that would result in the property only being separated from the property line of residential areas to the northwest by 10 feet. While the western side setback of 2 feet would be allowed by-right, ordinance rules require a 20-foot separation from residential zoning and uses to the north and northwest, and staff does not feel that sufficient practical difficulty exists to justify this encroachment into the required transitional yard setback.

- Since the expansion of the building would result in a new square footage more than 125% of the original area, no exemptions to compliance with current landscape requirements would apply. Areas of current non-compliance include the lack of trees and deficient width of landscape strips along both frontages and the lack of landscaping between this property and the D-4 zoning to the north. Staff notes that the proposal doesn't meet comprehensive plan guidance for landscaping within environmentally sensitive areas and would place the building much closer to a protected district without required buffering.
- Similarly, there would be no exemptions to parking minimums for the property since the proposed expansion would increase the number of parking spaces required at a rate higher than 15% of the current requirement. Retail uses with this square footage would require 14 spaces, and the site plan showing 12 spaces is below this requirement while also not showing any required bicycle parking spaces. Staff is concerned that an expansion of this size on a small lot that may already contain outdoor seasonal produce sales would result in higher demand for parking on a parcel with insufficient parking spaces and constitute overdevelopment of the property.
- Overall, staff feels that an expansion of this size would not be appropriate for any retail use within such close proximity to residential areas but would be especially inappropriate given that the business would remain open until 2-3am on most evenings. This, coupled with the lack of transitional yard landscaping to the north and northwest and the reduction in available parking, could create various negative externalities of noise and light pollution and would lead staff to recommend denial of the variance application.

GENERAL INFORMATION

Existing Zoning	C-3 (FF)	
Existing Land Use	Commercial	
Comprehensive Plan	Community Commercial	
Surrounding Context	Zoning	Surrounding Context
North:	D-4	North: Commercial
South:	C-3	South: Commercial
East:	C-3	East: Commercial
West:	C-3	West: Commercial
Thoroughfare Plan		
Georgetown Road	Secondary Arterial	90-foot existing right-of-way and 80-foot proposed right-of-way
34 th Street	Primary Collector	90-foot existing right-of-way and 102-foot proposed right-of-way

Context Area	Metro
Floodway / Floodway Fringe	Yes
Overlay	Yes
Wellfield Protection Area	No
Site Plan	06/25/2024
Site Plan (Amended)	08/14/2024
Elevations	08/26/2024
Elevations (Amended)	N/A
Landscape Plan	N/A
Findings of Fact	06/25/2024
Findings of Fact (Amended)	08/26/2024

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 for the Community Commercial typology which provides for low-intensity commercial and office uses that serve nearby neighborhoods. Examples of contemplated land uses include small-scale shops, personal services, professional and business services, grocery stores, drug stores, restaurants, and public gathering spaces.
- The site is predominantly located within an Environmentally Sensitive Area overlay which is intended for areas either containing high quality woodlands, wetlands, or other natural resources that should be protected or that present an opportunity to create a new environmental asset. Development should fully preserve or replace any wetlands or woodlands impacted by development and should preserve or add at least 20% of the entire parcel as tree canopy or naturalized area.

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

88-Z-262, rezoning of 0.63 acres from the D-4 zoning classification to the C-3 zoning classification to allow the existing commercial use to continue its legal non-conformity (package liquor store) under the appropriate zoning classification, **approved**.

88-UV1-104, variance of use of the Dwelling Districts Zoning Ordinance to provide for an addition to a package liquor store, **withdrawn**.

ZONING HISTORY – VICINITY

2011DV1040 ; 3401 Georgetown Road (east of site), variance of development standards of the Commercial Zoning Ordinance to provide for a gasoline station / convenience store, with access aisles with five-foot front setbacks along 34th Street and Georgetown Road, (minimum 10-foot front setbacks required), **approved**.

2006DV3021 ; 3350 Georgetown Road (south of site), variance of development standards of the Commercial Zoning Ordinance to provide for the construction of a 2,368 square foot building with a nine-foot rear setback and transitional yard (minimum ten-foot rear setback and transitional yard required), and with a kerosene dispenser and a portion of one parking space in the rear transitional yard (not permitted), and with a phone, air pump and vacuum in the required ten-foot front landscape strip along Georgetown road (not permitted), and with a trash enclosure located between the established front building line and Georgetown Road (not permitted), and to legally establish a five-foot landscape strip along approximately 25 feet of frontage along 34th Street (minimum ten-foot landscape strip required), **approved**.

96-Z-186 ; 3361 Georgetown Road (southeast of site), rezoning of 0.55 acres from D-5 to the C-4 zoning classification to allow for an automobile repair garage, **approved**.

81-Z-131 ; 3350 Georgetown Road (south of site), rezoning of 1.6 acres from D-5 to the C-3 zoning classification to allow for a gasoline filling station, **approved**.

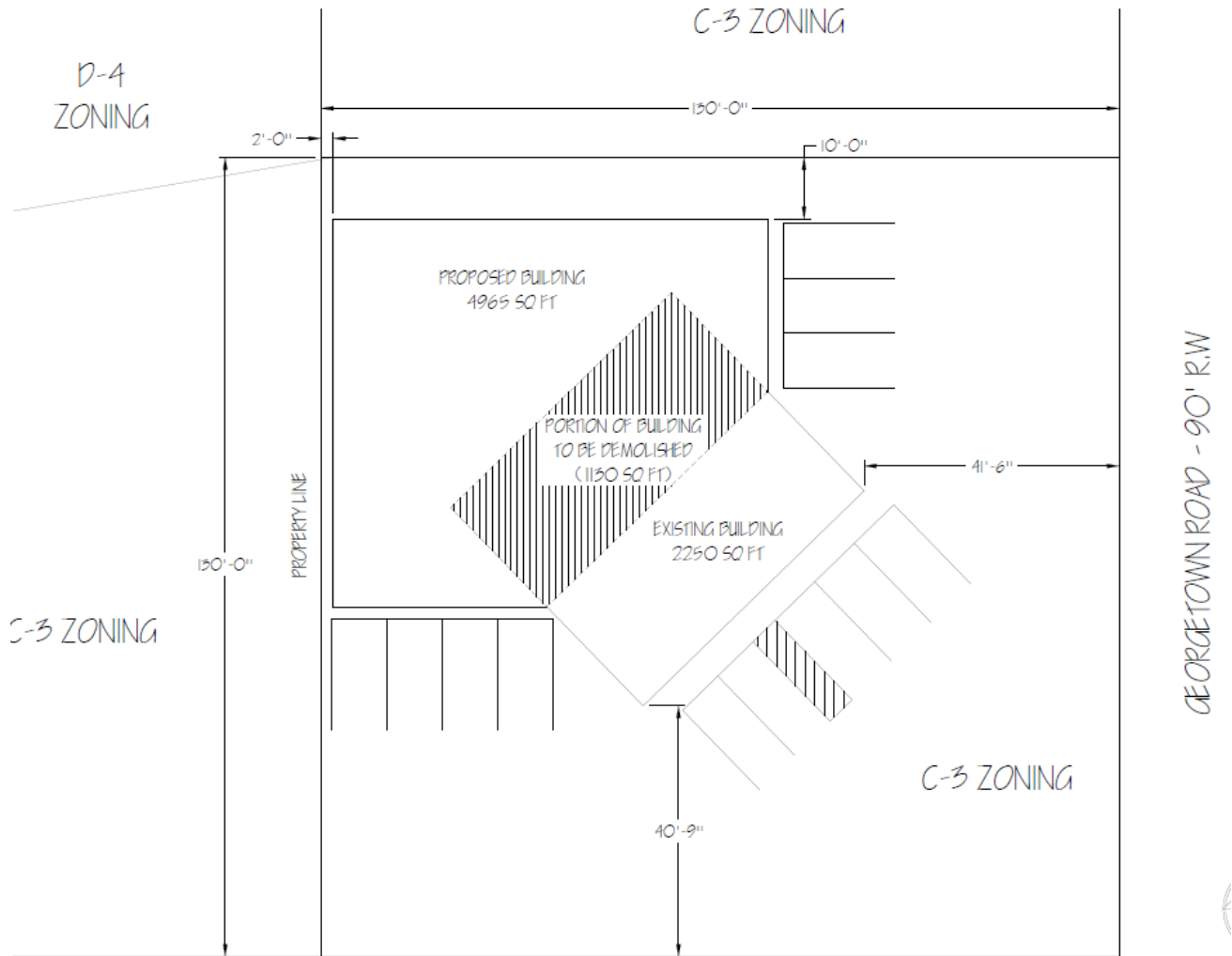
73-UV3-30 ; 3410 Georgetown Road (north of site), variance of use, setback street frontage, side, rear and transitional yard requirements and issuance of an Improvement Location Permit on an easement, to permit erection of a 222 unit motel, with office and pole sign, as per plans filed, **withdrawn**.

EXHIBITS

2024UV1015 ; Aerial Map



2024UV1015 ; Site Plan

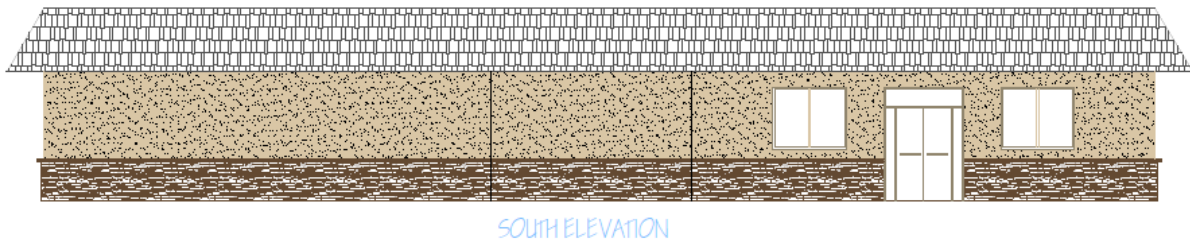
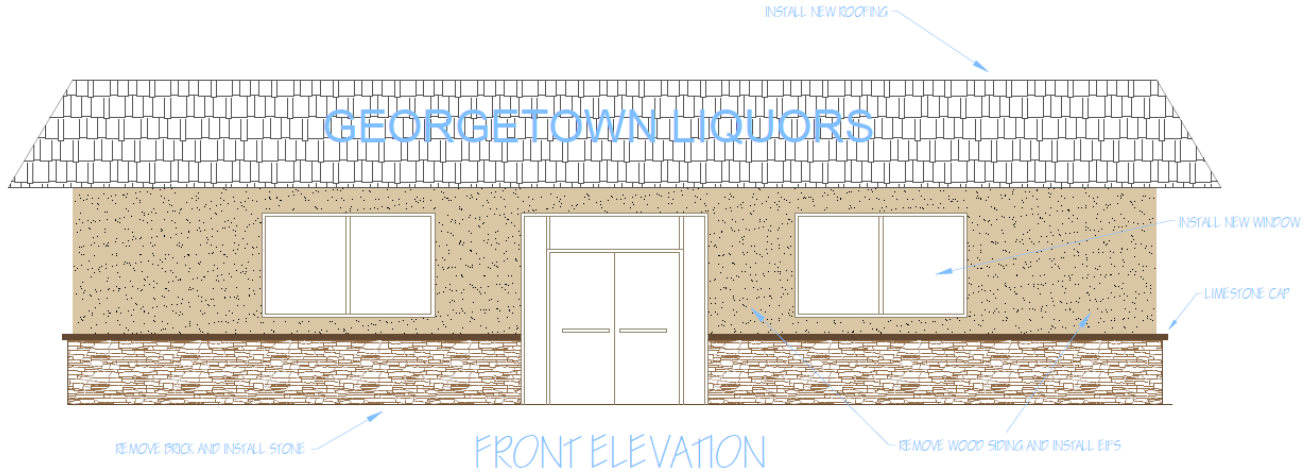


NOTE: DIMENSIONS ARE APPROXIMATE

34TH STREET 40' R/W

(Staff note: adjacent land to the north of the property is zoned D-4, not C-3)

2024UV1015 ; Front Elevation



2024UV1015 ; Plan of Operation

Workforce:

Typically, there is one cashier and at times 2 additional stockmen. The hours of operation are:

M-Th: 7 a.m. to 2 a.m.

Fri-Sat: 7 a.m. to 3 a.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 3 customers at a time depending on the day and hour. But generally speaking, they come one at a time.

Processes Conducted on Site:

The store requires stocking of all items that we sell. This goes for both refrigerated items and non-refrigerated items. A cashier is required at all hours of operation. There are cameras located by the cashier and bullet-proof glass exists for protection.

Materials Used:

There are no hazardous materials on site.

Shipping and Receiving:

Usually, a mid-sized truck is sent to our 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 or so to unload an order. We have orders come about once a week.

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.

2024UV1015 ; Findings of Fact (Use)

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 the addition that any harm could occur to someone and it certainly is not immoral to build an addition. The general welfare of the community will actually improve due to the higher level of aesthetics.

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 much better looking building. The addition will have no ill effects on the properties adjacent to this one.

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

This liquor store is very tight on interior space. Unfortunately for some reason it is not zoned C-4 or C-5 which would allow an addition to the liquor store.

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

The interior of the building is very tight with tight aiseways. Once this addition is finished it will open up the store significantly. This addition will allow for a larger cooler and for the owner to purchase more in bulk.

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

This building is a liquor store already. Therefore an addition and remodeling will only make the community better. There will be no interference caused to the adjacent properties as this addition will make for a better store.



2024UV1015 ; Findings of Fact (Landscaping/Parking)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

Historically, there has not been any room for landscaping in the front of the building. If landscaping was planted in this area it would cause vehicular accidents as there would not be enough room for vehicular movement. (see attached satellite view from Google Maps). Landscaping has not been on this property for decades thus not having it in the future will not be a burden to the community in any way - health, safety, morals, and general welfare. Actually, if landscaping was put on this property it would prohibit clear views of traffic at the intersection.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

As mentioned, landscaping has not been on this property in decades and thus values of the adjacent properties will be effected by not having landscaping in the future.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

The current parcel historically never had any land available for landscaping other than behind the building which is surrounded by a privacy fence. This would make the landscaping irrelevant. The front of the building that is exposed to the public is all asphalt which is required for the movement of vehicles. If landscaping was installed in the front of the building it would render the property useless as there would be no room for the building with parking.

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

The current liquor store currently has ten parking spaces and really no clear handicap parking stall. An addition of two parking spaces will be adequate even with the addition as the retail space will not expand much in relation to the additional storage space. Thus the traffic will not increase much and twelve spaces will be more than adequate. The typical liquor store customer will not spend much time in the store as opposed to like a clothing store. They get what they want, pay for the item, and leave. The 12 spaces will never be used. Probably 6 would suffice.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

The number of parking stalls will not adversely effect the use or the value of the adjacent properties as with this remodeling the parking lot will be changed appropriately unlike its current state (see attached street view). The current parking is in violation with the triangle view of the intersection and it has been like this for decades. If anything, it will increase the value of the adjacent properties and be more safe.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

When it comes to retail, especially a liquor store, the larger the order of merchandise the better the pricing. If the addition had to be smaller just because of the lack of two parking spaces it would adversely effect the owner's pricing on goods and thus reduce his profits.

2024UV1015 ; Photographs



Photo 1: Subject Site Viewed from Southwest



Photo 2: Subject Site Viewed from Northeast

2024UV1015 ; Photographs (continued)



Photo 3: Subject Site Viewed from West



Photo 4: Existing Dumpster (NW of Property) + Residence Viewed from South

2024UV1015 ; Photographs (continued)



Photo 5: Adjacent Property to West



Photo 6: Adjacent Property to North

2024UV1015 ; Photographs (continued)



Photo 7: Adjacent Property to South



Photo 8: Adjacent Property to East