

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-CZN-830 / 2023-CVR-830
Address: 201 West 38th Street and 3750 North Capitol Avenue (approximate address)
Location: Center Township, Council District #7
Petitioner: Martin Petroleum Inc., by Pat Rooney
Request: Rezoning of 0.44 acre from the D-5 and C-4 districts to the C-4 district.

Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the redevelopment of a convenience store within a residential district (not permitted) with a zero-foot south side transitional yard (10-foot side transitional yard required).

ADDENDUM FOR JULY 19, 2023, METROPOLITAN DEVELOPMENT COMMISSION

These petitions were heard by the Hearing Examiner on June 29, 2023. After a full hearing, the Hearing Examiner recommended denial of the rezoning and the variance requests. Subsequently, the petitioner's representative filed an appeal of the Hearing Examiner's decision. A memorandum of her recommendation is attached.

A continuance for cause request was submitted by the petitioner's representative to continue these petitions from the **July 19, 2023 hearing, to the August 16, 2023 hearing**. This would require a vote from the Metropolitan Development Commission.

RECOMMENDATIONS

Staff **recommends approval** of the rezoning request.

Staff **recommends denial** of the variance of use and development standards request.

SUMMARY OF ISSUES

LAND USE

- ◇ The subject site consists of a gas station and convenience store on the north parcel with an undeveloped residential lot at the southern parcel.
- ◇ The site is surrounded with an auto repair shop and single-family dwellings to the west, zoned D-5, tire shop to the north, zoned C-3, liquor store to the east, zoned C-4, and single and two-family dwellings to the east and south, zoned D-5.

REZONING

- ◇ The grant of the rezoning request would correct the split zoned northern parcel from the D-5 and C-4 districts to the C-4 classification for the entire parcel where the current gas station and convenience store are located.

(Continued)

STAFF REPORT 2023-CZN-830 / 2023-CVR-830 (Continued)

- ◇ The property at 201 West 38th Street is recommended for village mixed-use development by the Comprehensive Plan. Staff recommended the petitioner rezone the northern parcel to prevent future issues with the continued use and development of the northern parcel since the existing uses are not permitted in the D-5 district.
- ◇ The Village Mixed-Use typology creates neighborhood gathering places with a wide range of small businesses, housing types, and public facilities. This typology is intended to strengthen existing, historically small town centers as well as to promote new neighborhood centers. Businesses found in this typology serve adjacent neighborhoods, rather than the wider community. This typology is compact and walkable, with parking at the rear of buildings. Buildings are one to four stories in height and have entrances and large windows facing the street. Pedestrian-scale amenities such as lighting, landscaping, and sidewalk furniture also contributes to a walkable environment in this typology. Uses may be mixed vertically in the same building or horizontally along a corridor. Public spaces in this typology are small and intimate, such as pocket parks and sidewalk cafes. This typology has a residential density of 6 to 25 dwelling units per acre.
- ◇ Therefore, staff would recommend approval of the rezoning request.

VARIANCE OF USE

- ◇ This request would allow the redevelopment of a convenience store within the D-5 district. The site consists of two parcels with the north parcel split zoned between D-5 and C-4 and the southern parcel zoned D-5.
- ◇ The purpose of the D-5 (Dwelling District Five) district is intended for medium intensity residential development and is not intended for suburban use. The application of this district will be found within urban, build-up areas of the community and where all urban public and community facilities and services are available. The D-5 district typically has a density of 4.5 units per gross acre. This district fulfills the low and medium density residential classification of the Comprehensive General Land Use Plan.
- ◇ The purpose of the C-4, Community-Regional District is to provide for the development of major business groupings and regional-size shopping centers to serve a population ranging from a community or neighborhoods to a major segment of the total metropolitan area. The uses permitted in this district may feature several large traffic generators and require excellent access from major thoroughfares.
- ◇ The Pattern Book recommends the property at 3750 North Capitol Avenue for traditional neighborhood development.

(Continued)

STAFF REPORT 2023-CZN-830 / 2023-CVR-830 (Continued)

- ◇ The Traditional Neighborhood typology includes a full spectrum of housing types, ranging from single family homes to large-scale multifamily housing. The development pattern of this typology should be compact and well-connected, with access to individual parcels by an alley when practical. Building form should promote the social connectivity of the neighborhood, with clearly defined public, semi-public, and private spaces. Infill development should continue the existing visual pattern, rhythm, or orientation of surrounding buildings when possible. A wide range of neighborhood-serving businesses, institutions, and amenities should be present. Ideally, most daily needs are within walking distance. This typology usually has a residential density of 5 to 15 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.
- ◇ The Comprehensive Plan recommends village mixed-use development for the northern parcel (201), which the C-4 (community-regional commercial) District would be consistent with the recommendation, depending upon the context of the site. In this case, surrounding land uses are commercial along the north, west and east, but low-density residential is located south and would not be adequately buffered from this more intense 24-hour / seven-day use. The proposed use would not be appropriate for the southern parcel because the Comprehensive Plan recommends traditional neighborhood development, which would align more with small-scale offices, retailing, and personal or professional services rather than a regional use.
- ◇ The site is located within the Red Line TOD Strategic Plan, but it is not located within the Transit Oriented Development Secondary Zoning District. It falls within a Transit-Oriented Development (TOD) overlay within the Pattern Book, but it does not remove the use included in this request.
- ◇ The closest station to the site is located within a ½ a mile to the east at the intersection of 38th Street and Meridian Street. This station is categorized as a District Center with the potential for a dense mixed-use hub for multiple neighborhoods with tall buildings, minimum of 3 stories with no front or side setbacks, multi-family housing with a minimum of 5 units and structured parking only with active first floor.
- ◇ TOD investments here should leverage significantly higher residential and employment densities, demonstrations projects, urban living amenities and workforce housing.
- ◇ The commercial intensity and the impact upon the surrounding residences would include, but not be limited to, light, noise, and trash. Furthermore, the proposed use would be more of a regional draw, rather than serving just the surrounding residential neighborhood and would be a wholly and inappropriate commercial encroachment into a D-5 protected district. For these reasons, staff is recommending denial of the variance of use.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ This request would provide for a zero-foot south side transitional yard where the Ordinance requires a 10-foot south side transitional yard. The purpose of the 10-foot transitional yard is to provide separation and a buffer between residential uses and more intense uses, such as a fueling station and convenience store. The impact of this 24-hour, seven-day operation upon residential uses would be magnified with the proposed transitional yard reductions. Staff determined the reduced setbacks are a result of the proposed expansion of the use, which would be detrimental to the surrounding neighborhood.

(Continued)

STAFF REPORT 2023-CZN-830 / 2023-CVR-830 (Continued)

- ◇ The lack of a south transitional yard shows clear evidence that this site is not suitable for a convenience store and fueling station expansion which would have a negative impact on the surrounding residential neighborhood. The proposed use would be better suited on a site that would accommodate the proposed use, while complying with required development standards.
- ◇ If approved against staff's recommendation, the Department of Public Works would request that the eastern most driveway along 38th Street be closed to reduce vehicular conflicts with the heavy pedestrian traffic along this corridor.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

C-4 / D-5 Compact Commercial / Undeveloped Lot

SURROUNDING ZONING AND LAND USE

North	C-3	Commercial
South	D-5	Residential (Single-family dwelling)
East	C-4 / D-5	Commercial / Residential (Two-family dwelling)
West	D-5	Commercial and Residential (Single-family dwellings)

COMPREHENSIVE PLAN

The Marion County Land Use Plan Pattern Book (2019) recommends village mixed-use on the north parcel and traditional neighborhood development on the south parcel.

THOROUGHFARE PLAN

38th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial street, with a 101-foot existing right-of-way and a 114-foot proposed right-of-way.

Capitol Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial street, with a 60-foot existing right-of-way and a 56-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.

CONTEXT AREA

This site is located within the compact context area.

SITE PLAN

File-dated June 12, 2023.

ELEVATIONS

File-dated June 12, 2023.

RENDERINGS

File-dated June 12, 2023.

FLOOR PLAN

File-dated June 12, 2023.

(Continued)

STAFF REPORT 2023-CZN-830 / 2023-CVR-830 (Continued)

ZONING HISTORY – SITE

EXISTING VIOLATIONS

None.

PREVIOUS CASES

85-UV1-34; 201 West 38th Street (subject site), Variance of development standards of the Commercial Zoning Ordinance to provide for the construction and use of a convenience store with gasoline sales. Development will include an 8.6-foot rear transitional yard (20 feet required) and a pole sign located at six and eight feet from 38th Street and Capitol Avenue respectively (15 feet required), **granted**.

ZONING HISTORY – VICINITY

2018-UV3-026; 227 West 38th Street (west of site), Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for an automobile repair facility (not permitted), **granted**.

2013-CVR-814; 148 West 28th Street (northeast of site), Variance of development standards of the Commercial Zoning Ordinance to provide for a gasoline station and a 484-square foot addition to an existing building, with a canopy with a 64.42-foot setback from the centerline of Capitol Avenue (70-foot setback from centerline required), with a parking area with a zero-foot setback from Capitol Avenue (10-foot front setback required), with access drives with a 1.5-foot front setback along Capitol Avenue and a 2.5-foot front setback along 38th Street (10-foot front setback required), with carryout food service within 10 feet of a D-5 zoned protected district (100-foot separation required), **withdrawn**.

2013-UV1-038; 202 West 38th Street (north of site), Variance of use and development standards of the Commercial Zoning Ordinance to legally establish a 1,380-square foot storage addition (not permitted) for a tire sales and repair shop, with a one-foot north side transitional yard (20-foot transitional yard required), **withdrawn**.

95-V1-128; 3807 Graceland Avenue (northwest of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to legally-establish a detached garage measuring 27 x 33 feet: a) resulting in the square footage devoted to accessory buildings being 80% of the square footage devoted to the primary building (maximum 75% permitted); b) with a side yard setback from the north property line being 2.4 feet (minimum 4 feet required); c) resulting in 46% of the lot being open space (minimum 65% required), **granted**.

93-UV2-23; 227 West 38th Street (west of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for the continued operation of an automobile repair shop with the variance being valid only for Albert Sutton, **granted**.

89-AP2-4; 227 West 38th Street (west of site), Approval of extension of time to obtain an Improvement Location Permit to modify condition #2 concerning the site plan approved pursuant to petition 88-UV2-9, **granted**.

89-UV3-96; 148 West 28th Street (northeast of site), Variance of use of the Commercial Zoning Ordinance to provide for a restaurant with carry-out service, **denied**.

(Continued)

STAFF REPORT 2023-CZN-830 / 2023-CVR-830 (Continued)

88-UV2-9; 227 West 38th Street (west of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for an automobile repair business with signs. The grant shall be for a temporary period of five years, expiring January 12, 1993, **granted.**

85-UV1-34; 201 West 38th Street (subject site), Variance of use of the Dwelling Districts Zoning Ordinance and development standards of the Commercial Zoning Ordinance to provide for the construction and use of a convenience store with gasoline sales. Development will include a 6.6-foot rear transitional yard (20 feet required) and a pole sign located at 6 and 8 feet from 38th Street and Capitol Avenue respectively (15 feet required). The sign will also include separate panels for the food mart, gas prices and food mart items, **granted.**

84-UV2-21; 227 West 38th Street (west of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for the use of a former service station for automobile repair to be a temporary variance for three years, expiring on March 20, 1987, **granted.**

83-UV2-78; 3801 North Capitol Avenue (northeast of site), Variance of use and development standards to provide for a carry-out restaurant within one-hundred feet of a residential zoning district, a reduction in required transitional yards, a drive-up window canopy in required front yard setback and a pole sign within the clear-sight area, **granted.**

MI

2023-CZN-830 / 2023-CVR-830; Location Map



2023-CZN-830 / 2023-CVR-830; Aerial Map



MEMORANDUM OF EXAMINER'S DECISION

2023-CZN/CVR-830

201 W. 38th St, 3750 N. Capitol Ave.

The petitions request the rezoning of 0.44 acre from the D-5 and C-4 districts to the C-4 district, with a variance of use to provide for the redevelopment of a convenience store within a residential district and a variance of development standards to permit a zero foot south side transitional yard (10 foot side transitional yard required).

Your Hearing Examiner visited the site prior to the hearing and noted the existing gas station and convenience store on the north end of the site and a vacant lot on its south end. A variety of auto-related and commercial uses exist in the area, as well as single-family and two-family residences.

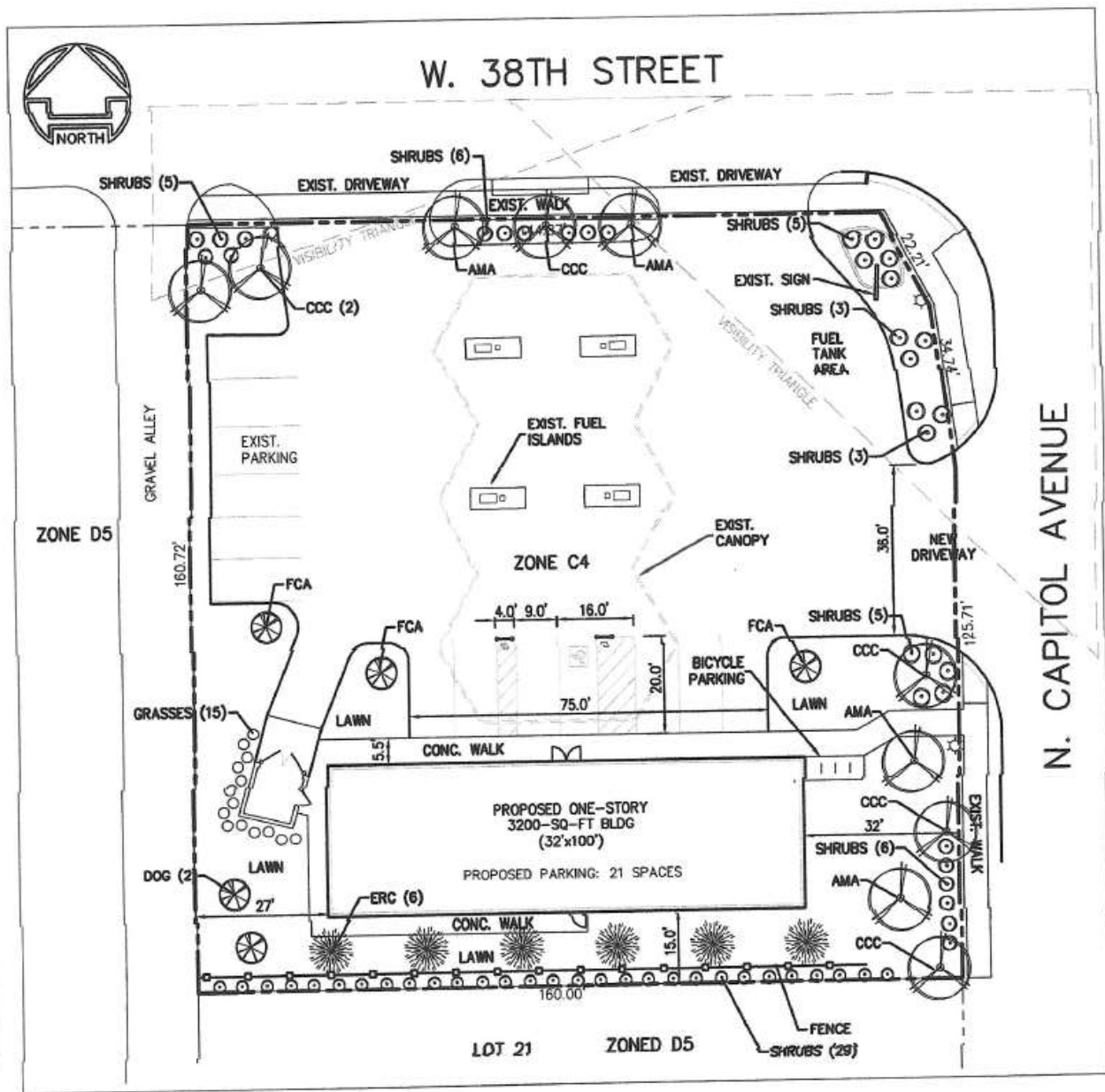
The petitioner's representative explained that the 18 year owners of the existing gas station and convenience store want to redevelop the site, including the vacant parcel to the south, with a new convenience store and enhanced landscaping. The representative described meeting with neighbors and neighborhood groups to garner support, and referenced the plan of operation, commitments, and a petition of support with over 200 signatures. A neighbor stated that the proposal would improve the corner and the neighborhood.

The president of Crown Hill Neighborhood Association shared that several neighborhood groups in the Midtown area were excited about this transformational project; however, commitments requested by these groups were not completely reflected in the commitments proposed by the petitioner.

Staff stated that, because the north parcel had a split zoning, staff recommended approval of the rezoning petition. Staff expressed concern with having the convenience store on south parcel, without a transitional yard, because of activity associated with this use, including lights, noise, trash, and incompatibility with the residences to the south.

In your Hearing Examiner's opinion, while a redevelopment of the existing gas station and convenience store may enhance the neighborhood, encroachment into the residential area to the south should be avoided. The encroachment would be exacerbated by not providing the required transitional yard. Denial of these petitions was recommended.

For Metropolitan Development Commission Hearing on July 19, 2023



PROPOSED SITE PLAN CONVENIENCE STORE IMPROVEMENTS 201 W. 38th Street Indianapolis, IN

SPIARS ENGINEERING LLC

April 21, 2023

PROPOSED TREES

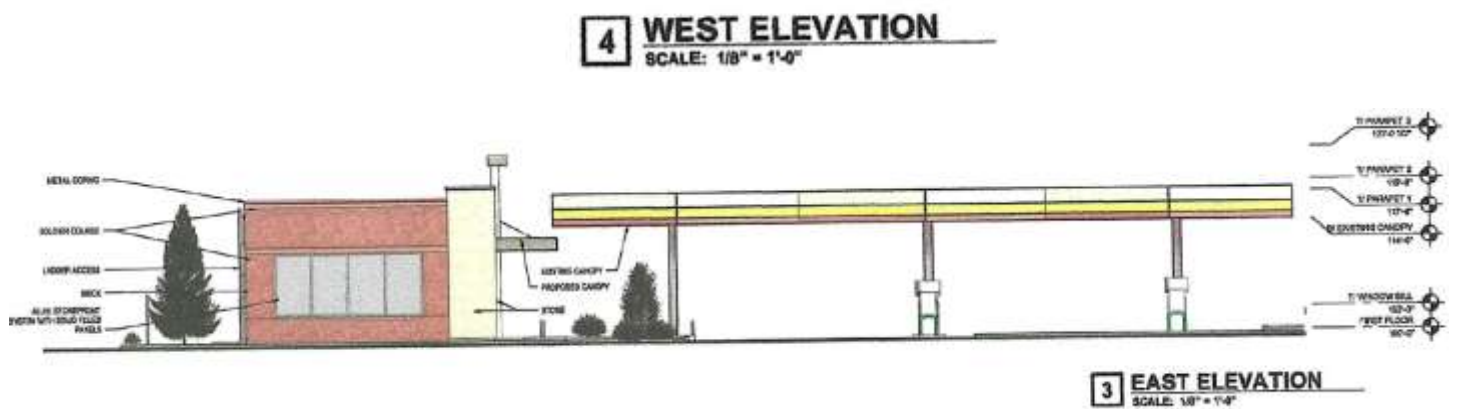
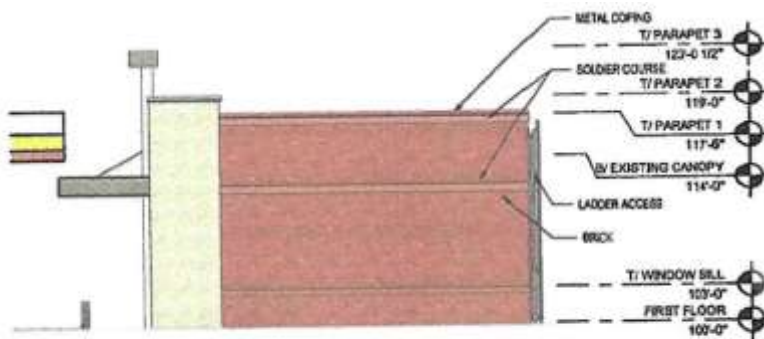
STREET TREES: (10 REQUIRED, 1 PER 35' OF STREET FRONTAGE)

- AMA=AMERICAN MOUNTAIN ASH
- CCC=COMMON CHOKE CHERRY
- ERC=EASTERN RED CEDAR

ORNAMENTAL TREES:

- DOG=PAGODA DOGWOOD
- FCA=FLOWERING CRABAPPLE

SHRUBS AND GRASSES = 72

[illegible]

2023-CZN-830 / 2023-CVR-830; Renderings



SOUTHEAST PERSPECTIVE

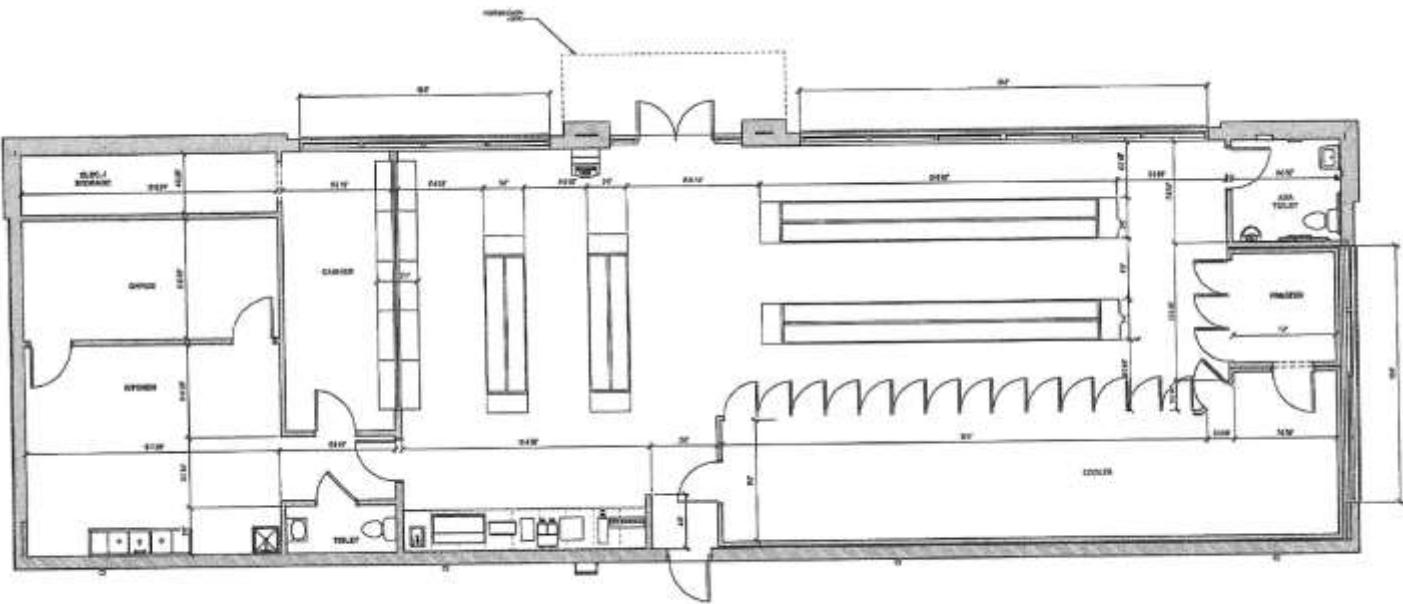


NORTH PERSPECTIVE



NORTHEAST PERSPECTIVE

2023-CZN-830 / 2023-CVR-830; Floor Plan



1 FLOOR PLAN
SCALE: 1/4" = 1'-0"

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

the property is already a retail gas station along a busy street with similar properties adjacent thereto, there will be sufficient buffer to the residential properties to the south, and the property will be more aesthetically pleasing.

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

granting the variance will increase the value of the subject property and the adjacent properties because the property will be redeveloped with a new and improved building instead of the old, dilapidated building currently on the property.

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

a portion of the property is C-4 and a portion of the property is D-5, and the property was developed as a gas station when convenience stores mainly sold tobacco products instead of now when the convenience stores sell groceries which require a building with much larger square footage in order store and display the products.

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 subject property has two zoning classifications thereby unduly restricting the ability to expand the convenience store which is necessary for the petitioner to update the building to match the times and allow petitioner to sell the same inventory being offered by petitioner's competitors instead of going out of business.

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

the use would still be the same, retail gas station, which is compatible with Village Mixed Use.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____

Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

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

the property is already a retail gas station along a busy street with retail properties adjacent thereto, there will be sufficient buffer to the residential properties to the south, including a transitional yard with abundant landscaping between the actual property and any residential properties.

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:

granting the variance will increase the value of the property and surrounding properties because the property will be redeveloped with a new, modern building which will replace the old, run down building currently on the property. The property and adjacent properties will also benefit from the substantial landscaping included in the transitional yard which will create a buffer between the property and any adjacent residential properties.

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

the subject property has two zoning classifications thereby unduly restricting the ability to expand the convenience store which is necessary for the petitioner to update the building to match the times and allow the petitioner to sell additional groceries instead of limiting sales to tobacco products.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____

2023-CZN-830 / 2023-CVR-830; Photographs



Subject site and street frontage along 38th Street looking east.



Western property boundary abutting an alley.



Existing southern property boundary and undeveloped residential lot to be included in the site.



Proposed location of the new convenience store abutting single-family dwellings to the south.



Street frontage along Capitol Avenue looking south.



Undeveloped residential lot to be included in the project development.



Commercial and residential uses east of the site.



Commercial use north of the site.



Commercial use west of the site.