

BOARD OF ZONING APPEALS DIVISION III

August 19, 2025

Case Number: 2025-UV3-006

Property Address: 2308 Shelby Street (approximate address)

Location: Center Township, Council District #19

Petitioner: Walter Resinos

Current Zoning: C-3 (TOD)

Request: Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for outdoor recreation and entertainment (not permitted) on a proposed deck with a 2.5-foot setback from Shelby Street, a 3.7-foot setback from Hervey Street, and encroaching within the Clear Sight Triangle of their intersection (10-foot front yard setbacks required, encroachment of Clear Sight Triangles not permitted).

Current Land Use: Commercial

Staff Recommendations: Staff **recommends denial** of this petition.

Staff Reviewer: Noah Stern, Senior Planner

PETITION HISTORY

- This petition was continued from the May 20, 2025 hearing to the June 17th, 2025 hearing due to insufficient notice.
- This petition was automatically continued by a Registered Neighborhood Organization from the June 17, 2025 hearing to the July 15, 2025 BZA Division III hearing.

STAFF RECOMMENDATION

- Staff **recommends denial** of this petition.

PETITION OVERVIEW

- This petition would allow for outdoor recreation and entertainment use (not permitted) on a proposed deck with a 2.5-foot setback from Shelby Street, a 3.7-foot setback from Hervey Street, and encroaching within the Clear Sight Triangle of their intersection (10-foot front yard setbacks required, encroachment of Clear Sight Triangles not permitted).
- The subject site is corner lot that is zoned C-3 (TOD), and is improved with a single-story commercial building. With regards to the Variance of Use, the approval of this petition would allow for outdoor recreation and entertainment in the C-3 zoning district, which is reserved for the C-5 and C-7 zoning districts.

- The outdoor recreation and entertainment use is defined as:
 - An open area offering entertainment or sports, athletics or games of skill to the general public. This definition includes facilities such as golf courses, swimming pools, baseball/softball fields; live entertainment or performances; boat and canoe rentals (as accessory use to a fishing lake operation); fishing lake operations (commercial or private); go cart raceways; scenic railroads; and drive-in theaters. This definition does not include Sports Stadium.
- Outdoor recreation and entertainment uses are limited to C-5 and C-7 districts due to the heightened intensity that generally comes with live entertainment performances and events occurring outside, particularly with regards to noise from music and the large crowds that these events can generate. Further, these uses are reserved for C-5 and C-7 due to the increased amount of space that outdoor recreation and entertainment typically requires to accommodate crowds and venue space. With C-3 characterized as Neighborhood Commercial, these lots are typically smaller and neighborhood scale, meaning that lots in C-3 districts are usually not large enough to accommodate these uses. With this lot being zoned C-3 and only 0.13 acres in size, Staff does not find the proposed use to be appropriate and to be too intense for the site.
- With regards to the Variance of Development Standards for reduced front yard setbacks and encroachment into the Clear Sight Triangle, this petition would allow for an outdoor deck to be added to the building in both front yard setbacks along Hervey Street and Shelby Street that would encroach into the Clear Sight Triangle by approximately 10 feet. With Hervey Street being a local street, and Shelby Street being a secondary arterial, the Clear Sight Triangle is measured 75 feet along Hervey Street and 120 feet along Shelby Street starting from the intersection of the centerlines. Staff is concerned about the proposal as the deck and associated fence partially blocks visibility of Shelby Street when looking from Hervey Street (see site photos below). Staff does not find there to be any practical difficulty for these requests, as the site is of sufficient size for C-3 standards, and is self-imposed. Staff would note that there is no exception in the Ordinance for partially transparent fences encroaching into the Clear Sight Triangle, as even transparent fences can impact visibility and the ability of motorists to see oncoming traffic from the intersecting street, which Staff finds to be the case in this situation. Further, Staff believes that any unnecessary obstructions should not be located within the Clear Sight Triangle to ensure maximum visibility of roadways. Therefore, Staff is opposed to the variances for reduced front yard setbacks and encroachment into the Clear Sight Triangle and recommends denial of these requests.
- Additionally, Staff does not believe that the submitted site plan to be accurate with regards to the location of the deck. Firstly, the diagonal line is not an accurate depiction of the Clear Sight Triangle at this location. Second, based on the scale of the plan, the location of diagonal portion of deck is shown at almost 10 feet from the intersection of the two sidewalks, while the site photos show the deck much closer than 10 feet.

GENERAL INFORMATION

Existing Zoning	C-3 (TOD)	
Existing Land Use	Commercial	
Comprehensive Plan	Village Mixed-Use	
Surrounding Context	Zoning	Surrounding Context
North:	C-3 (TOD)	North: Community Commercial
South:	C-3 (TOD)	South: Community Commercial
East:	C-3 (TOD)	East: Community Commercial
West:	D-5 (TOD)	West: Single-family residential
Thoroughfare Plan		
Shelby Street	Secondary Arterial	60 feet of right-of-way existing and 78 feet proposed
Harvey Street	Local Street	50 feet of right-of-way existing and 48 feet proposed
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	Yes, Transit Oriented Development	
Wellfield Protection Area	No	
Site Plan	3/27/25	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	3/27/25	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- TOD Red Line Strategic Plan

Pattern Book / Land Use Plan

- The Marion County Land Use Plan pattern Book recommends the Village Mixed-Use typology for this site.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- The subject site is located within ¼ mile of the Shelby Street and Raymond Street transit station. This area has been classified under the community center typology, which is characterized by a dense mixed-use neighborhood center, a minimum of 2 stories at the core, and the presence of multi-family housing with a minimum of 3 units.

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

2024UV3004; Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a tattoo parlor within 55 feet of a protected district (not permitted within 500 feet of a protected district), **granted**.

94-Z-130; rezoning of 4.43 acres, being in the C-1, C-2, C-3, and D-5 districts to the C-3 classification to conform zoning to the Garfield Park/Pleasant Run Neighborhood Plan, **approved**.

ZONING HISTORY – VICINITY

2022ZON105; 2340 & 2344 Shelby Street (south of site), Rezoning of 0.24 acre from the C-3 (TOD) district to the MU-2 (TOD) district, **approved**.

2015DV2005; 2242 Shelby Street (north of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to provide for: a) the construction of a 384-square foot detached garage for bicycle repair, an addition to the main dwelling, to be used for an espresso bar, bicycle sales and display, and bicycle and supply storage, and two decks for outdoor seating (not permitted), b) with five parking spaces (seven parking spaces required), with deficient maneuvering (not permitted), and c) to provide for a handicapped ramp, with a zero-foot front setback from Shelby Street or 30 feet from the centerline (70 feet from the centerline required), and d) to provide for a 6.25-square foot suspended sign, with less than eight feet of clearance (maximum five square feet permitted, minimum eight feet of clearance required) and a 40 square foot wall sign on the front porch parallel to Shelby Street, **approved**.

99-UV2-64; 2230-2340 Shelby Street (north of site), variance of use and development standards of the Commercial Zoning Ordinance to provide for the expansion of a tavern within 100 feet of a protected district, liver entertainment and no off-street parking, **granted**.

98-UV3-81; 2320 Shelby Street (south of site), requested a variance of use to permit the sale and repair of major appliances, **denied**.

95-UV1-35; 2320 Shelby Street (south of site), requested a variance of use to provide for a mechanical contractor operation and heavy equipment storage of an HVAC company, including storage of materials and tools *such as sheet metal fabricators, arc welder, and cleaning solvents* for HVAC service, **denied**.

89-UV3-73; 2242 Shelby Street (north of site), requested a variance of use to permit retail sale of jewelry, coins and metals, **granted**.

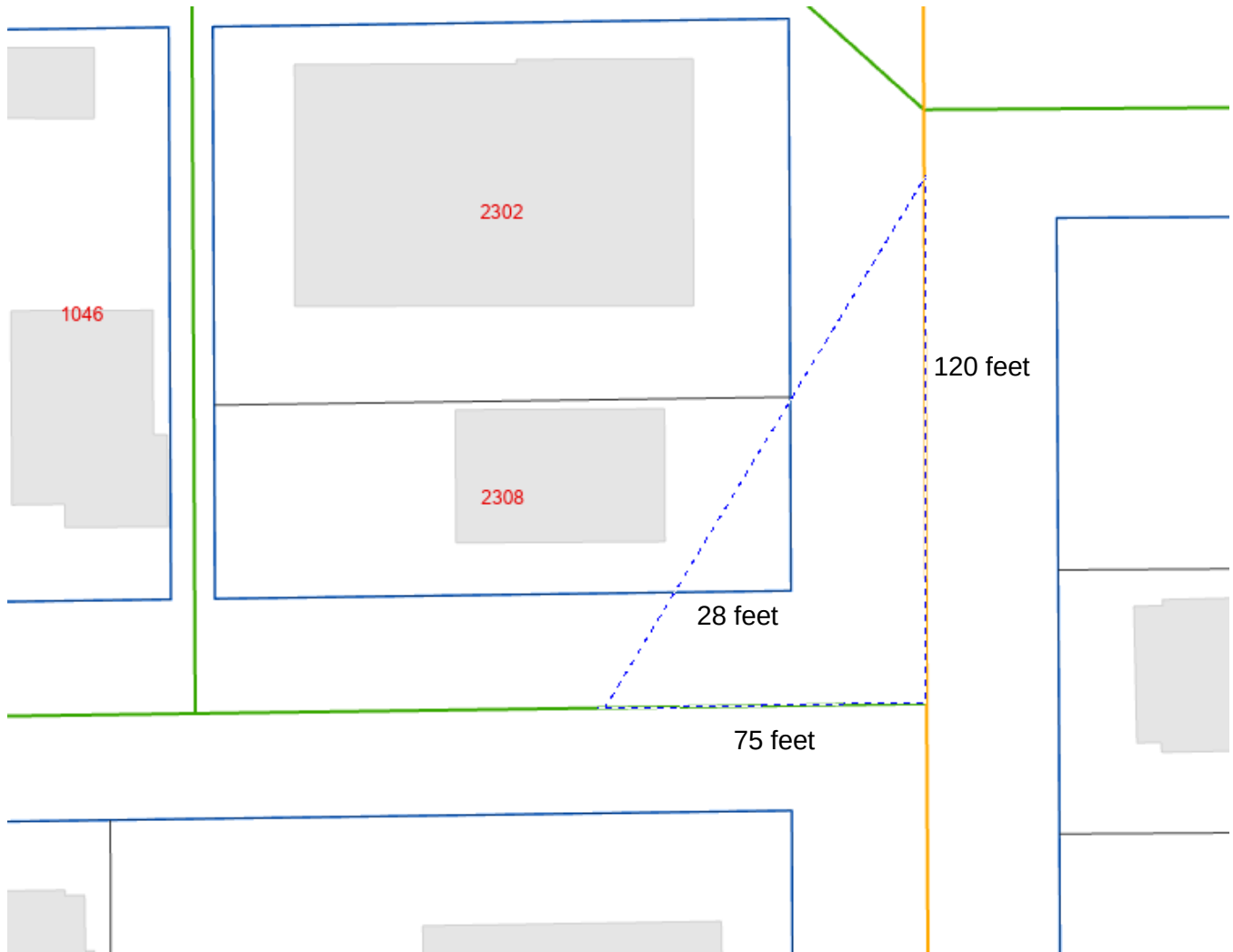
87-UV2-29; 2236 Shelby Street (north of site), requested a variance of use to permit an automobile clean-up business, **denied**.

83-UV3-4; 2310 Shelby Street (north of site), requested a variance of use and development standards to permit a site-down restaurant, **granted**.

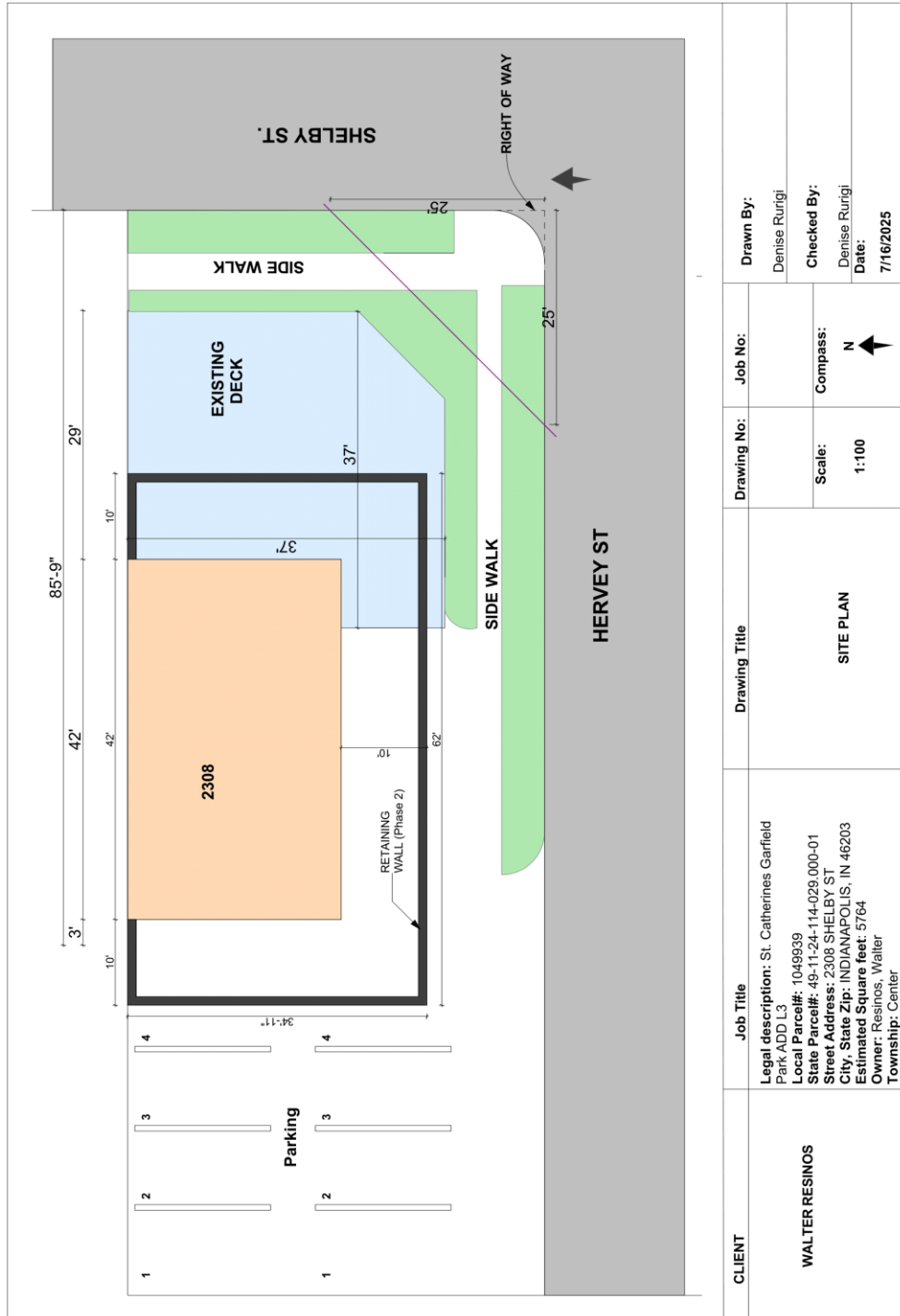
EXHIBITS



Aerial Photo



Clear Sight Triangle Exhibit



Updated site plan, file-dated 8/4/25

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

1. The deck will be used for business access & for recreational purposes.
2. Under phase 2, the retaining wall will expand the available exterior space by providing additional space for the customers.
3. Under phase 2, the second floor addition will provide additional interior space that will be used by the customer & or anyone entering the building.

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

it is an old fire station that is currently being used for storage. It will rather bring value to the adjacent property as it will be surrounded by more businesses.

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

1. the existing C-3 commercial zoning doesn't allow for an exterior deck for entertaining/ recreational purposes without a variance of use.
2. The deck and the proposed retaining wall under phase 2, enchoaces into the required 10'-deep front yards from the property line.

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

1. It will limit the growth of the business community.
2. It will hinder the operations of the existing business currently on the property because it will limit the use of the exterior space. It will limit the number of customer access points to the building.
3. It will limit the use of the exterior space and prevent the use of the deck for recreational purposes.

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

The Variance that is being requested does not interfere in any way with the other surrounding businesses or adjacent properties.
Under phase 2, the proposed retaining wall and second floor addition will be built in adherence to the local safety regulations & building codes.

DECISION

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

Adopted this _____ day of _____, 20 ____



Department of Metropolitan Development
Division of Planning
Current Planning

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:

1. The deck poses no risk to pedestrians as it was built at ground level & within the property line. It does not interfere with the pedestrian traffic neither does it block the view since the railing is a see-through horizontal cable railing.

2. Under phase 2, The retaining wall will not pose any risk neither will it block the view as it will be built below ground level.

3. Under phase 2, the second floor addition will not pose any risk as it will be built as per building safety standards and following local building codes

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:

1. The adjacent property is an old fire station that is currently being used for storage. The existing deck was built in the corner of Shelby & Hervey St. away from the adjacent property.

2. Under phase 2, the retaining wall will not affect or interfere with the adjacent property in any way as it will be built on the opposite side facing Hervey St.

3. Under phase 2, the proposed second floor addition will not affect the use or value of the adjacent property as it will be constructed on top of the existing building.

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

It will hinder the operations of the existing business currently on the property because it will limit the use of the exterior space. It will limit the number of customer access points to the building.

DECISION

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

Adopted this _____ day of _____, 20 ____



Looking north along Shelby Street



Looking northwest at primary building



Looking northwest at fence and deck



Looking west at subject site from other side of Shelby Street



Looking northeast



Looking north at deck and building