

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-ZON-083
Address: 2991 East Troy Avenue (*Approximate Address*)
Location: Perry Township, Council District #21
Petitioner: Timothy Agee d/b/a The Sanctuary, Inc., by Greg Ilko
Request: Rezoning of 2.3 acres from the D-5 district to the SU-7 district to provide for a food pantry ministry.

ADDENDUM FOR THE SEPTEMBER 28, 2023, HEARING EXAMINER

This petition was continued from the September 14, 2023 hearing, to the September 28, 2023 hearing at the request of a remonstrator to allow additional time for discussions and review the request. No additional information has been provided to the case file.

Staff continues to recommend approval subject to the commitment in the staff report.

September 14, 2023

RECOMMENDATIONS

Staff **recommends approval** of the request 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:

A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees that are 8-inch in caliper (measured 4.5 feet above ground level) or larger, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.

SUMMARY OF ISSUES

LAND USE

- ◇ The 2.3-acre subject site is part of a larger 5.3-acre parcel that is currently developed with a church, associated parking lot, and accessory structures with the remainder of the site being undeveloped. The survey notes that the undeveloped portion of the site to be rezoned is located at the southwest corner of the property that fronts along Merts Drive.
- ◇ The 5.3-acre parcel is currently split zoned with the north portion being in the C-3 district and the southern portion including the 2.3-acre area in question being in the D-5 district. It is bordered by single-family dwellings to the west and south, zoned D-5 and a single-family dwelling to the north zoned C-3. The remaining southeastern portion of the 5.3-acre parcel will be undeveloped.

(Continued)

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REZONING

- ◇ The request would rezone the subject site to the SU-7 district to provide for a food pantry ministry.
- ◇ The site is zoned D-5, which is intended for medium and large-lot housing formats, primarily for detached houses, but may incorporate small-scale multi-unit building types in strategic locations. This district can be used for new, walkable suburban neighborhoods or for infill situation in established urban areas, including both low density and medium density residential recommendations of the Comprehensive Plan, and the Suburban Neighborhood and Traditional Neighborhood Typologies of the Land Use Pattern Book.
- ◇ The SU-7 district is intended to be used for charitable institutions that would also include philanthropic and not-for-profit institutions.
- ◇ Lastly, the Comprehensive Plan recommends suburban neighborhood development for the site. 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.

Tree Preservation / Heritage Tree Conservation

- ◇ There are significant amounts of natural vegetation and trees located on the eastern portion of the site. Due to their inherent ecological, aesthetic, and buffering qualities, the maximum number of these existing trees should be preserved on the site.
- ◇ All development shall be in a manner that causes the least amount of disruption to the trees.
- ◇ A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development, b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
- ◇ If any of the trees are heritage trees that would be impacted, then the Ordinance requires that the Administrator, Urban Forester or Director of Public Works determine whether the tree(s) would be preserved or removed and replaced.

Continued)

STAFF REPORT 2023-ZON-083 (Continued)

- ◇ The Ordinance defines “heritage tree” as a tree over 18 inches Diameter at Breast Height (DBH) and one of the Heritage tree species. Heritage tree species include: Sugar Maple (*Acer saccharum*), Shagbark Hickory (*Carya ovata*), Hackberry (*Celtis occidentalis*), Yellowwood (*Cladrastus kentukea*), American Beech (*Fagus grandifolia*), Kentucky Coffeetree (*Gymnocladus dioica*), Walnut or Butternut (*Juglans*), Tulip Poplar (*Liriodendron tulipifera*), Sweet Gum (*Liquidambar styraciflua*), Black Gum (*Nyssa sylvatica*), American Sycamore (*Platanus occidentalis*), Eastern Cottonwood (*Populus deltoides*), American Elm (*Ulmus americana*), Red Elm (*Ulmus rubra*) and any oak species (*Quercus*, all spp.)
- ◇ The Ordinance also provides for replacement of heritage trees if a heritage tree is removed or dies within three years of the Improvement Location issuance date. See Staff Exhibit 1 for Table 744-503-3: Replacement Trees.

Staff Analysis

- ◇ In staff’s opinion, the proposed rezoning would align with the suburban neighborhood recommendation of the Comprehensive Plan because it allows for neighborhood serving institutions, which would be the case with the proposed food pantry ministry.
- ◇ The petitioner confirmed that this business would not be operated by the church on site, but if it had been operated by the church the request would have been a permitted accessory use for the church and could have rezoned the entire site to SU-1. Therefore, a separately operated charitable institution would not be seen differently by staff and is supportable.
- ◇ The final development of the site would require Administrator’s Approval for being in a special use district and approval of the rezoning should be subject to a commitment for a tree preservation plan to be submitted for Administrator’s Approval to ensure a significant portion of the dense wooded area remains so the existing ecosystem can continue to thrive.
- ◇ The petitioner has agreed to this commitment as noted in the submitted commitment form.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-5	Metro	Undeveloped (Portion to be rezoned)
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SURROUNDING ZONING AND LAND USE

North	C-3	Residential (Single-family dwellings)/
South	D-5	Residential (Single-family dwellings)
East	D-5	Residential (Single-family dwellings)
West	D-5	Residential (Single-family dwellings)

COMPREHENSIVE PLAN

The Comprehensive Plan recommends suburban neighborhood development.

(Continued)

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THOROUGHFARE PLAN	Troy Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial, with a 70-foot existing right-of-way and a 90-foot proposed right-of-way.
THOROUGHFARE PLAN	Merts Drive is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing and proposed right-of-way.
TRANSIT-ORIENTED DEVELOPMENT	This site is not located within the Transit-Oriented Development Overlay.
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.
SURVEY	File-dated August 10, 2023.
PROPOSED COMMITMENT	File-dated August 31, 2023.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

None.

PREVIOUS CASES

62-Z-35; 356 East Troy Avenue (north portion of site), Rezoning of 7 acres being in the R-4 district, to U3-H1-A2 classifications to permit the construction of a shopping center and service shops, **approved**.

ZONING HISTORY – VICINITY

87-Z-254; 2802 East Troy Avenue (north of site), Rezoning of 9.74 acres, being in the C-3 district, to the C-1 classification, to provide for the construction of a nursing home, **withdrawn**.

MI

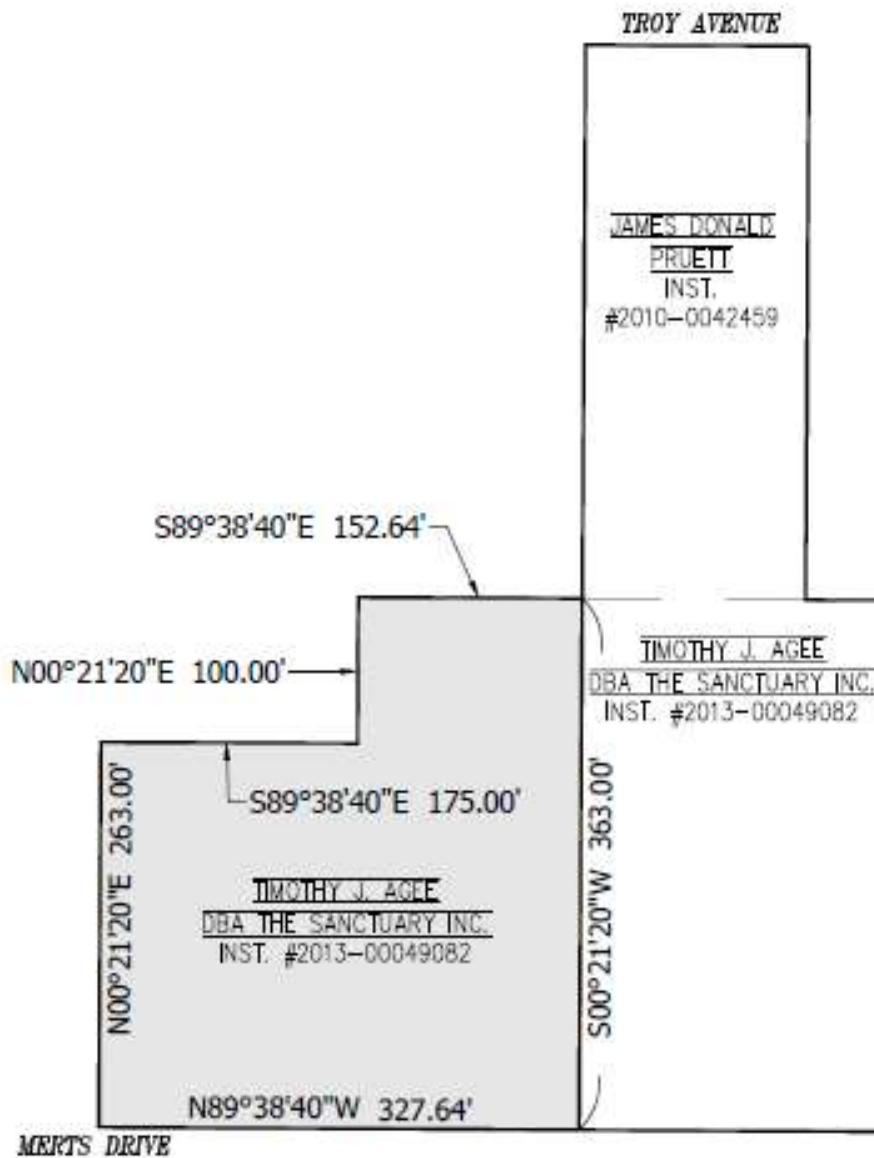
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2023-ZON-083; Survey

COUNTY: MARION
SECTION: 29
TOWNSHIP: 15 NORTH
RANGE: 4 EAST

REZONE EXHIBIT

DRAWN BY: ILF 08-08-23
CHECKED BY: GWC



 AREA OF REZONE

NO FIELDWORK WAS PERFORMED AND THEREFORE, THIS DESCRIPTION IS SUBJECT TO ANY OVERLAPS, GAPS OR INCONSISTENCIES THAT A FIELD SURVEY MIGHT REVEAL. THIS PLOT WAS PREPARED FROM INFORMATION OBTAINED FROM INSTRUMENT NUMBER 2013-00049082 AND INSTRUMENT NUMBER 2010-0042459, AS RECORDED IN THE MARION COUNTY RECORDER'S OFFICE.

PREPARED BY:



Transportation &
Development Consultants
P.O. Box 415 623 045 1-800 371 99-08

STATEMENT OF COMMITMENTS

**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description:

A PART OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 15 NORTH, RANGE 4 EAST IN MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE WEST ALONG THE NORTH LINE OF SAID QUARTER SECTION 885.84 FEET; THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION 378.18 FEET TO THE NORTH LINE OF LOT 2 IN THAT PARTITION OF HANSING ESTATES SUBDIVISION RECORDED AS DEED RECORD 9, PAGE 562, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH PARALLEL TO SAID EAST LINE 363 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE WEST ALONG SAID SOUTH LINE 327.64 FEET TO THE SOUTHEAST CORNER OF BARTLETT'S ADDITION, AN ADDITION IN MARION COUNTY, INDIANA, AS PER PLAT THEREOF RECORDED AS INSTRUMENT NUMBER 90-105643 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA; THENCE NORTH ALONG THE EAST LINE OF SAID BARTLETT'S ADDITION 263 FEET; THENCE EAST 175 FEET; THENCE NORTH 100 FEET TO THE NORTH LINE OF SAID LOT 2; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 A DISTANCE OF 152.64 FEET TO THE POINT OF BEGINNING.

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".

2023-ZON-083; Proposed Commitments (Continued)

2. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees that are 8" in caliper (measured 4.5 feet above ground level) or larger, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
-
3. _____
-
4. _____
-
5. _____
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These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition #2023-ZON-083 by the City-County Council changing the zoning classification of the real estate from a D-5 zoning classification to a SU-7 zoning classification; or
- (b) the adoption of approval petition # _____ by the Metropolitan Development Commission;

and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the SU-7 zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be enforced jointly or severally by:

MDC's Exhibit B - - page 2 of 5

M. Replacement Trees

In the event an Existing Tree that was given credit or a Heritage Tree is removed or dies within 3 years of the ILP issuance date, replacement trees shall be planted. The number of replacement trees that must be planted for each tree lost shall be in accordance with Table 744-503-3: Replacement Trees.

Table 744-503-3: Replacement Trees		
Size of tree removed or dead (inches)	Number of Trees to be planted to replace a Heritage Tree	Number of Trees to be planted to replace an existing tree
Over 36 DBH	15	10
25.5 to 36 DBH	11	8
13 to 25 DBH	8	6
10.5 to 12.5 DBH	6	4
8.5 to 10 DBH	5	4
6.5 to 8	3	2
4 to 6	2	2
2.5 to 3.5	1	1

In the event that the site cannot accommodate the number of replacement trees required, the Administrator may authorize an alternate location for the planting of the replacement trees within the County as close to the site as feasible.

2023-ZON-083; Photographs



Photo of the Subject Property: 2991 East Troy Avenue



View of the church parking lot looking south at the portion of the site not included in the request.



Photo of the undeveloped southwest portion of the subject site included in the rezone request.



View of the entire street frontage along Merts Drive in the rezone request.



Photo of the abutting single-family dwelling west of the site.



Photo of the abutting single-family dwelling east of the site.



Photo of the single-family dwelling south of the site across Merts Drive.