

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-CZN-817 / 2023-CVR-817
Address: 5959 East 38th Street and 3700, 3742 and 3790 North Arlington Avenue
(Approximate Address)
Location: Warren Township, Council District #13
Petitioner: Horizon Bank, by Joseph D. Calderon
Requests: Rezoning of 5.8 acres from the MU-2 (FW) (FF) (TOD) and C-4 (FW) (FF) (TOD) district to the MU-2 (FW) (FF) (TOD) district to provide for a mixed-use development.

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for:

- a) Building heights of 50 feet for multi-family structures (maximum 35 feet permitted),
- b) A drive-through service unit located on the side of a proposed bank and not accessed by an alley (required to be located behind building and be accessed by an alley),
- c) Improvements located within the 60-foot Stream Protection Corridor of Pogues Run (not permitted),
- d) With deficient interior parking lot landscaping (not permitted),
- e) With parking located in front of proposed buildings with a zero-foot setback (parking prohibited in front of buildings, 50-foot setback required),
- f) With portions of proposed buildings located behind the required Front Building Line (0'-10' building line required).

ADDENDUM FOR JUNE 21, METROPOLITAN DEVELOPMENT COMMISSION

These petitions were heard by the Hearing Examiner on May 25, 2023. After a full hearing, the Hearing Examiner recommended approval of the rezoning and denial of the requested variances c) and d). Subsequently, the petitioner's representative filed an appeal of the Hearing Examiner's decision. A memorandum of her recommendation is attached.

May 25, 2023

The Hearing Examiner acknowledged a timely automatic continuance filed by a registered neighborhood organization that continued these petitions from the April 27, 2023 hearing, to the May 25, 2023 hearing.

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RECOMMENDATIONS

Staff **recommends approval** of rezoning request, subject to the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptables provided for the proper disposal of trash and other waste.
2. 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 / or 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.
3. The final site plan, landscaping plan and elevations shall be submitted to Administrator Approval prior to the issuance of an Improvement Location Permit (ILP). Such plans shall provide for mitigation features of encroachment into the stream protection corridor that would include, but not be limited to, permeable pavers, rain gardens, curbs and gutters, bio-swales, and etc.; year around perimeter and interior landscaping; landscaping within the parking areas in accordance with the Ordinance requirements; and exterior building materials should include a variety of materials, including masonry.

Staff **recommends approval** of variance requests a), b), e) and f); staff **recommends denial** of variance requests c) and d).

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

- ◇ This 5.8-acre site, zoned MU-2 (FW) (FF) (TOD) and C-4 (FW) (FF) (TOD), is comprised of four parcels at the southwest corner of the intersection of East 38th Street and North Arlington Avenue. Three of the parcels are undeveloped and one parcel is developed with commercial uses. The site is surrounded by commercial uses to the north, zoned C-3 (FW) (FF) (TOD); industrial uses to the south, zoned I-3 (FW) (FF) (TOD); commercial and industrial uses to the east; across North Arlington Avenue, zoned D-3 (FW) (FF) (TOD) and I-2 (FW) (FF) (TOD), respectively; and commercial uses and undeveloped land (Pogues Run) to the west, zoned C-4 (FW) (FF) (TOD) and D-4 (FW) (FF) (TOD).

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- ◇ Petition 2009-ZON-051 rezoned the northern portion of the site from the C-4 District to the C-3C (now known as MU-2) to provide for corridor commercial uses.

REZONING

- ◇ This request would rezone the site from the MU-2 (FW) (FF) (TOD) and C-4 (FW) (FF) (TOD) district to the MU-2 (FW) (FF) (TOD) district to provide for a mixed-use development. “The MU-2 District is intended to meet the daily needs for surrounding neighborhoods and include small social spaces that serve as neighborhood gathering places. The district includes primarily neighborhood-serving businesses and institutions, including a wide range of small-scale retail and service uses that typically do not draw customers from beyond the adjacent neighborhoods, and employment, institutional and residential uses that complement the compact, walkable development pattern. The MU-2 District is implemented as a small node or on busy corridors in the Traditional Neighborhood or City Neighborhood Typologies of the Land Use Pattern Book, or as a Village Mixed Use Typology. The typical size of a district is from 2 to 20 acres (1 to 4 blocks) but depends on the context and what integrates best into surrounding neighborhoods and complimentary zoning districts.”
- ◇ The Comprehensive Plan recommends community commercial typology. “The Community Commercial typology provides for low-intensity commercial, and office uses that serve nearby neighborhoods. These uses are usually in freestanding buildings or small, integrated centers. Examples include small-scale shops, personal services, professional and business services, grocery stores, drug stores, restaurants, and public gathering spaces.”
- ◇ The Pattern Book lays out a land use classification system that guides the orderly development of the county, protects the character of neighborhoods and serves as a policy guide for development or redevelopment of a site.
- ◇ The following elements of the Pattern Book apply to this site:

Conditions for All Land Use Types

- All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
- All development should include sidewalks along the street frontage.

Small-Scale Offices, Retailing, and Personal or Professional Services (defined as commercial uses with minimal outdoor operations, storage, or display on lots of less than 1.5 acres and a height of less than 35 feet.)

- Outdoor display of merchandise should be limited.
- If adjacent to residential uses or a Living Typology, outdoor display of merchandise is not recommended.
- Should be located along an arterial or collector street.

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- If proposed within one-half mile along an adjoining street of an existing or approved residential development, then connecting, continuous pedestrian infrastructure between the proposed site and the residential development (sidewalk, greenway, or off-street path) should be in place or provided

Modified Uses (Environmental Sensitive Area Overlay)

- Small-Scale Offices, Retailing, and Personal or Professional Services - Any development impacting wetlands or high-quality woodlands should include a one-for-one replacement of such features. Additionally, development should preserve or add at least 20% of the entire parcel as tree canopy or naturalized area

Modified Uses (Transit-Oriented Overlay)

- Small-Scale Offices, Retailing, and Personal or Professional Services - Development should be supportive of pedestrian activity (e.g. compact, connected to a pedestrian system, no more than one third of the frontage used for parking.)

Overlays

- ◇ This site is located within an overlay, specifically the Environmentally Sensitive overlay (ES). "Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology."
- ◇ The Environmentally Sensitive Areas (ES) Overlay is intended for areas containing high quality woodlands, wetlands, or other natural resources that should be protected. The purpose of this overlay is to prevent or mitigate potential damage to these resources caused by development. This overlay is also appropriate for areas that present an opportunity to create a new environmental asset. This overlay is not intended for the preservation of open space.
- ◇ The northern portion of this site is located within the 100-year floodplain and the unregulated 500-year floodplain, along with woodlands that cover much of the site.
- ◇ This site is also located within an overlay, specifically the Transit Oriented Development (TOD). "Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology."
- ◇ The Transit-Oriented Development (TOD) overlay is intended for areas within walking distance of a transit station. The purpose of this overlay is to promote pedestrian connectivity and a higher density than the surrounding area.
- ◇ This site is located adjacent to a proposed transit stop located at the intersection of East 38th Street and North Arlington Avenue, with a Community Center typology.

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- ◇ This typology is described as walkable commercial centers with a range of commercial types (aging to new strip commercial, office, shopping malls, big box). It is a mixed of retail, entertainment, office and residential as desired. Surface parking should be consolidated and placed behind buildings, allowing a pedestrian orientation at the street, while still supporting drive-to business.
- ◇ Characteristics of the Community Center typology are:
 - A dense mixed-use neighborhood center
 - Minimum of two stories at core
 - No front or side setbacks at core; zero to 10-foot front setbacks and zero-to 10-foot side setbacks at the periphery.
 - Multi-family with a minimum of three units
 - Structured parking at the core and attractive surface parking at the periphery

Floodway / Floodway Fringe

- ◇ This site has a secondary zoning classification of a Floodway (FW) and Floodway Fringe (FF). The Floodway (FW) is the channel of a river or stream, and those portions of the floodplains adjoin the channels which are reasonably required to efficiently carry and discharge the peak flood flow of the base flood of any river or stream. The Floodway Fringe (FF) is the portion of the regulatory floodplain that is not required to convey the 100-year frequency flood peak discharge and lies outside of the floodway.
- ◇ The purpose of the floodway district is to guide development in areas identified as a floodway. The Indiana Department of Natural Resources (IDNR) exercises primary jurisdiction in the floodway district under the authority of IC 14-28-1.
- ◇ The designation of the FF District is to guide development in areas subject to potential flood damage, but outside the Floodway (FW) District. Unless otherwise prohibited, all uses permitted in the primary zoning district (MU-2 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.

Tree Preservation / Heritage Tree Conservation

- ◇ There are significant amounts of natural vegetation and trees located much 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.

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- ◇ 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.
- ◇ 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 Exhibit A, Table 744-503-3: Replacement Trees.

Stream Protection Corridor

- ◇ A stream protection corridor consists of a strip of land, extending along both sides of all streams, with measurements taken from the top of the bank on either side. The width of the corridor is based upon whether the stream is designated as a Category One or Category Two. Category One streams have a corridor width of 60 feet in the compact context area and 100 feet in the metro context area. Category Two streams have a corridor width of 25 feet in the compact context area and 50 feet in the metro context area.
- ◇ The vegetative target for the Stream Protection Corridor is a variety of mature, native riparian tree and shrub species that can provide shade, leaf litter, woody debris, and erosion protection to the stream, along with appropriate plantings necessary for effective stream bank stabilization.
- ◇ The Stream Protection Corridor is defined as:

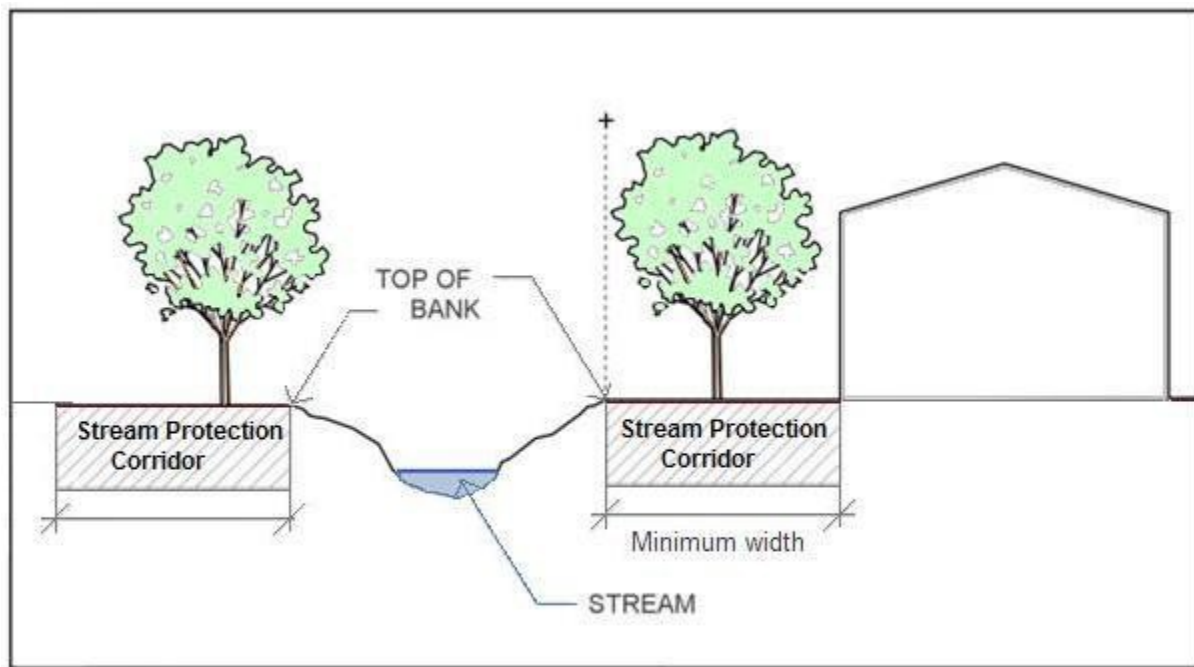
“A vegetated area, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system, lake, or reservoir, and where alteration is strictly limited. Functionally, stream protection corridors provide erosion control, improve water quality (lower sedimentation and contaminant removal) offer flood water storage, provide habitat, and improve aesthetic value.”

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- ◇ Stream is defined as “a surface watercourse with a well-defined bed and bank, either natural or artificial that confines and conducts continuous or periodic flowing water.”
- ◇ Stream Bank is defined as “the sloping land that contains the stream channel and the normal flows of the stream.”
- ◇ Stream Channel is defined as “part of a watercourse that contains an intermittent or perennial base flow of groundwater origin.”
- ◇ There are two types of categories of Streams: Category One Streams and Category Two Streams. Pleasant Run is listed as a Category One Stream, which is defined as: “A perennial stream that flows in a well-defined channel throughout most of the year under normal climatic conditions. Some may dry up during drought periods or due to excessive upstream uses. Aquatic organism such as some fish are normally present and easily found in these streams. The Category One Streams are listed in Table 744-205-2: Category One Streams.”
- ◇ Category Two Stream is defined as: “An intermittent stream that flows in a well-defined channel during wet seasons of the year but not necessarily for the entire year. These streams generally exhibit signs of water velocity sufficient to move soil, material, litter, and fine debris. Aquatic organisms, such as fish, are often difficult to find or not present at all in these streams. These streams are identified on the United States Geological Survey (USGS) topographic maps and on the Department of Natural Resources Conservation Service (NRCS) soils maps.”
- ◇ There are 32 Category One streams listed in the Ordinance. The stream protection corridor is a strip of land on both sides of the stream whose width varies according to whether it is within the Compact or Metro Context Area and whether it is a Category One or Category Two Stream.
- ◇ Pogues Run is located along the wester portion of the site and is designated as a Category One.
- ◇ As a Category One Stream within the Compact Context Area, Pogues Run is required to have a 60-foot stream protection corridor on both sides of the stream, as measured parallel from the top of the bank. Top of the bank is not defined by the Ordinance, other than by Diagram UU, Stream Protection Corridor Cross-section, as shown below.

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Stream Protection Corridor

Environmental Public Nuisances

- ◇ The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.
- ◇ All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.
- ◇ Environmental public nuisance means:
 1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
 2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
 3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or

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4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.
- ◇ Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

Site Plan

- ◇ The amended site plan, file-dated May 4, 2023, provides for two access drives to the development, including one along East 38th Street (within the stream protection corridor) and one along North Arlington Avenue.
- ◇ Commercial uses would be located at the northwest corner of the site fronting on East 38th Street and North Arlington Avenue.
- ◇ Four multi-family buildings would be located on the southern portion of the site with parking interspersed throughout the site. No count on the number of apartments has been provided so it is not possible to determine the number of required parking spaces for the multi-family dwellings. Furthermore, no square footage has been provided for the commercial uses. Consequently, staff would request Administrator Approval for the site plan, landscaping plan and elevations prior to the issuance of an Improvement Location Permit (ILP).

Planning Analysis

- ◇ The request would generally not be consistent with the Comprehensive Plan recommendation of community commercial typology. There are components of the commercial community typology (proposed bank, leasing and retail) that would be accessory to four multi-family buildings.
- ◇ The Purple Line Transit-Oriented Strategic Plan, however, recommends a dense mixed-use neighborhood center for this site that includes multi-family development at a minimum of two stories at the core. As proposed, this development would be consistent with this plan recommendation.
- ◇ For these reasons, staff is recommending approval of the rezoning request.
- ◇ Because of the conceptual submittal, staff is requesting a submittal of a site plan, landscape plan and elevations for Administrator Approval prior to the issuance of an Improvement Location Permit (ILP).

VARIANCES OF DEVELOPMENT STANDARDS

- ◇ There are six variances of development standards related to building heights, drive throughs, encroachment into the stream protection corridor, lack of landscaping in the parking areas, and setbacks.

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- ◇ The first requested variance would provide for a 50-foot building height of the multi-family structures when the Ordinance limits building heights to 35 feet.
- ◇ Because this proposed development is located along two primary arterials, with industrial uses to the east and south and the buffer provided by Pogues Run to the west, staff believes the impact of these taller buildings would have minimal impact on surrounding land uses.
- ◇ The second requested variance would provide for a drive-through service unit located on the side of a proposed bank without the required alley access.
- ◇ Due to the site configuration and the absence of an alley, there is a practical difficulty related to the proposed drive-through service unit. Consequently, staff supports this requested variance.
- ◇ The third requested variance would allow for improvements to encroach into the stream protection corridor.
- ◇ The conceptual site plan indicates that an existing small commercial development would be demolished, resulting in an approximately six-acre site that is undeveloped. The proposed access drive along East 38th Street and a portion of a parking lot would encroach into that corridor.
- ◇ Consequently, staff believes encroachment into the stream protection corridor could be avoided. Staff would also note that no information has been submitted that could potentially mitigate the impact upon the stream protections corridor.
- ◇ The fourth requested variance would allow for deficient interior parking lot landscaping. The required number of parking spaces is based upon the number of dwelling units and square footage of uses.
- ◇ Staff believes this request is premature because the documents that have been submitted do not have details necessary to determine the number of required parking spaces that relate specifically to the design of the parking lots. Consequently, staff believes a practical difficulty has not been sufficiently documented.
- ◇ The fifth requested variance would provide for parking in front of the buildings with zero-foot setback when the Ordinance prohibits parking in front of the buildings, along with a 50-foot setback.
- ◇ Staff believes that the location and configuration of the site presents development challenges that merit some relief from the Ordinance. The small number of parking spaces proposed in front of the two buildings fronting on North Arlington Avenue would have minimal impact on the proposed development and adjacent land uses.
- ◇ The sixth and final variance request would allow proposed buildings to be located behind the required zero- to 10-foot front building line.

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- ◇ The proposed bank at the northeast corner of the site and the southernmost proposed building along the North Arlington Avenue have been pulled back from the maximum 10-foot setback resulting from the need for the variance.
- ◇ Staff believes providing visibility at the intersection of East 38th Street and North Arlington Street (both primary arterials) would be appropriate given the proposed transit station at this intersection and the potential for increased pedestrian activity.
- ◇ Staff believes providing additional space along the frontage of North Arlington Avenue would be acceptable if enhanced landscaping would be installed, thereby improving the pedestrian experience along a highly traveled street. Staff, therefore, supports this variance request, subject to appropriate landscaping in this area.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

C-4 (FW) Undeveloped / commercial uses
(FF) (TOD)
/ MU-2
(FW) (FF)
(TOD)

SURROUNDING ZONING AND LAND USE

North -	C-3 (FW) (FF) (TOD)	Commercial uses
South -	I-3 (FW) (FF) (TOD)	Industrial uses
East -	D-3 (FW) (FF) (TOD) and I-2 (FW) (FF) (TOD)	Industrial uses
West -	C-4 (FW) (FF) (TOD) and D-4 (FW) (FF) (TOD).	Commercial uses / Undeveloped land

COMPREHENSIVE PLAN

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends community commercial typology.

Marion County Land Use Pattern Book (2019).

The Purple Line Transit-Oriented Development Strategic Plan (2021).

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THOROUGHFARE PLAN	This portion of East 38th Street is designated in the Marion County Thoroughfare Plan as a primary arterial, with an existing 128-foot right-of-way and a proposed 88-foot right-of-way. This portion of North Arlington Avenue is designated in the Marion County Thoroughfare Plan as a primary arterial, with an existing 90-foot right-of-way and a proposed 78-foot right-of-way.
CONTEXT AREA	This site is located within the compact context area.
OVERLAY	This site is located within an environmentally sensitive and transit-oriented development overlays.
SITE PLAN	File-dated March 30, 2023
SITE PLAN (AMENDED)	Filed dated May 4, 2023
FINDINGS OF FACT	Filed-dated March 30, 2023

ZONING HISTORY

2009-ZON-051; 5959 East 38th Street and 3790 North Arlington Avenue (abutting site to south), requested rezoning of 2.75 acres, from the C-4 (FF)(FW) District, to the C-3C (FF)(FW) classification to provide for corridor commercial uses, **approved**.

62-V-31; 5959 East 38th Street, requested variance to enclose carport associated with previously approved drive-in restaurant, and utilize full structure as a restaurant with alcohol sales, **granted**.

VICINITY

2012-CZN-828 / 2012-CVR-828; 5950 East 38th Street (north of site), requested rezoning of 0.54 acre from the C-4 District to the C-3 classification to provide for a convenience store / gasoline station and variances of development standards of the Dwelling Districts Zoning Ordinance to provide for a trash container with a zero-foot front yard setback and in front of the established building line; carryout food service within zero feet of a D-5 zoned protected district; and legally establish a zero-foot front yard along 38th Street, a zero-foot north side yard, a zero-foot north front yard, and zero-foot west front yard, **approved and granted**.

93-Z-74; 3745 Arlington Avenue (east of site), requested rezoning of 7.29 acres from C-5, D-4 and D-A to I-2-S, **approved**.

90-AP-117; 5950 East 38th Street (north of site), requested modification of commitments related to 84-Z-106 to provide for an alternate site plan, to provide landscaping along the site's frontages of East 38th Street and Arlington Avenue rather than a brick-capped wall, **approved**.

84-Z-106, 84-CV-13; 3802 North Arlington Avenue (north of site), requested rezoning of 0.54 acre from D-5 to C-4, **approved**; and a variance of the front setback and rear transitional yard requirements to provide for automotive sales, service and repair, **approved**.

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STAFF REPORT 2023-CZN-817 / 2023-CVR-817 (Continued)

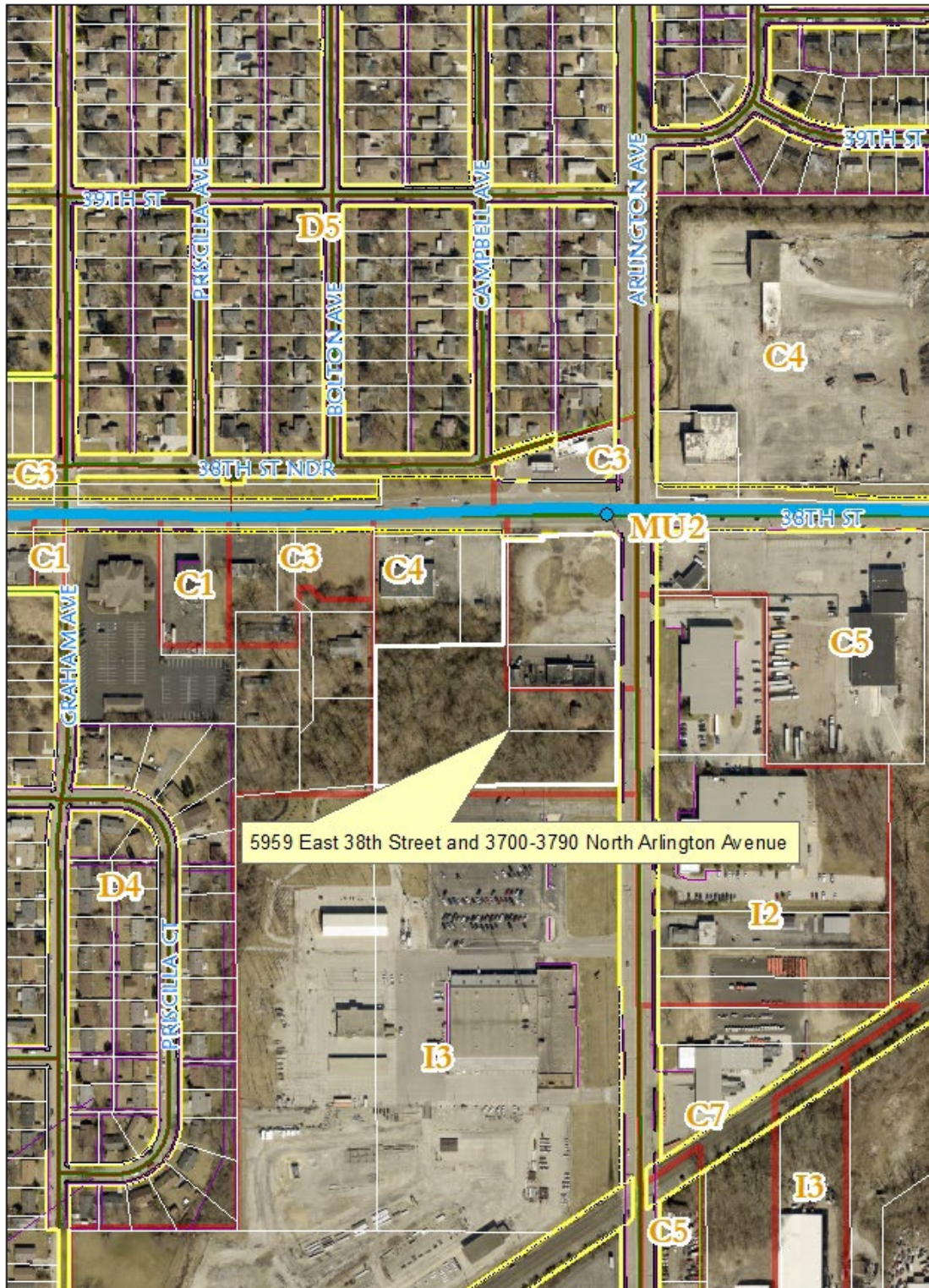
80-UV3-1; 3802 North Arlington Avenue (north of site), requested variance of use and development standards to provide for sales and service of tires, batteries and accessories in an existing building, **granted**.

69-V1-183; 3802 North Arlington Avenue (north of site), requested variance of use, setback and rear yard requirements to provide for a gasoline service station, **granted**.

62-V-512; 3790 North Arlington Avenue (south of site), requested permission to allow for retail sale of packaged liquor within existing business building, **granted**.

62-V-185; 3790 North Arlington Avenue (south of site), requested variance of use to allow for an open-air auto sales lot, **granted**.

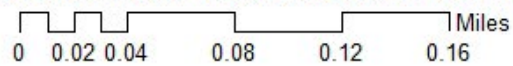
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5959 East 38th Street and 3700-3790 North Arlington Avenue



5959 East 38th Street and 3700-3790 North Arlington Avenue



MEMORANDUM OF EXAMINER'S DECISION

2023-CZN/CVR-817

5959 E. 38th St., 3700-3790 N. Arlington Ave.

The petitions request the rezoning of 5.8 acres from the MU-2 (FW, FF, TOD) and C-4 (FW, FF, TOD) districts to the MU-2 (FW, FF, TOD) district to provide for a mixed-use development, and six variances of development standards regarding height, drive-through service unit, Stream Protection Corridor, interior parking lot landscaping, parking lot setback, and building setback.

Your Hearing Examiner visited the primarily undeveloped site prior to the hearing and noted Pogues Run along the north/northwest portion of the site. The area is developed with a mixture of commercial and industrial uses.

The petitioner's representative described the redevelopment of the site for a bank, a mixed-use building, and multi-family residential development, and explained how the proposal conformed with the Comp Plan and several neighborhood plans recommending community commercial development. Because the two points of contention were the variances for the Stream Protection Corridor and interior parking lot landscaping (variances c) and d)), discussion focused on those two variances. The representative stated that only about 1,800 square feet of improvements are within the Stream Protection Corridor and suggested the Stream Protection Corridor warranted deficient interior parking lot landscaping.

An adjacent resident remonstrated at the hearing and expressed concern with Pogues Run being an attractive nuisance to future residents on the site. There was a letter from Warren Township Development Association opposing the variances of the Stream Protection Corridor and deficient interior parking lot landscaping (variances c) and d)).

Staff explained its support of the rezoning petition and all variances except those for the Stream Protection Corridor and the interior parking lot landscaping (variances c) and d)). Staff stated that there were ongoing discussions with the petitioner about mitigating both of those variances, but no commitments had been finalized. Staff also expressed concern with the lack of green space and recreation amenities on the site.

In your Hearing Examiner's opinion, the proposed redevelopment of this site will be an asset to the community, and approval was recommended of the rezoning petition and of variances a), b), e), and f). Because the Stream Protection Corridor is of utmost importance and there are unresolved mitigation measures for it and for interior parking lot landscaping, denial was recommended of variances c) and d).

For Metropolitan Development Commission Hearing on June 21, 2023

EXHIBIT A

Heritage Tree Conservation

Removal of any Heritage Tree is prohibited unless any of the following determinations are made before removal:

1. The Administrator or the city's Urban Forester determines that the tree is dead, significantly and terminally diseased, a threat to public health or safety, or is of an undesirable or nuisance species.
2. The Director of the Department of Public Works determines that the tree interferes with the provision of public services or is a hazard to traffic.
3. The Administrator determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree.
4. The site from which the tree is removed is zoned D-A and the tree is harvested as timber or similar forestry product.

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

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 variances are all necessary to facilitate a project which is bringing needed services (a bank branch and new housing) and none of the variances sought will create a traffic or access issue with respect to 38th Street or Arlington Ave.

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:

there will be adequate separation from the proposed improvements to improvements/uses on adjacent property. There is an intervening floodway which provides natural separation from the west as well.

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 a stream and associated flood hazard access running through a significant portion of it which compresses the potential buildable area, thus triggering several development standard variances.

DECISION

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

Adopted this _____ day of _____, 20 ____



View looking west along East 38th Street



View looking east along East 38th Street



View of site looking southeast across East 38th Street



View looking of adjacent land uses looking northeast across East 38th Street



View

View from site looking northwest across East 38th Street



View looking south along North Arlington Avenue



View looking north along North Arlington Avenue



View of site looking north from adjacent property to the south



View of site looking north from adjacent property to the south



View of site looking west across North Arlington Avenue



View of site looking west across North Arlington Avenue



View of site looking northwest across North Arlington Avenue



View from site looking east across North Arlington Avenue



View from site looking southeast across North Arlington Avenue