

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-ZON-101
Address: 3905 East Raymond Street and 3820 and 3912 Bethel Avenue
(Approximate Address)
Location: Center Township, Council District #21
Petitioner: Malwa Truck & Tire Repair Shop, LLC, by David Gilman
Request: Rezoning of 17.25 acres from the D-3 (FW) (FF), C-7 (FF) and I-3 districts to the C-7 (FW) (FF) district to provide for heavy commercial uses.

ADDENDUM FOR DECEMBER 14, 2023, HEARING EXAMINER

The Hearing Examiner continued this petition from the November 16, 2023 hearing, to the December 14, 2023 hearing, to clarify discrepancies related to the parcels included in this rezoning request and the proposed commitments.

Portions of this site were included in petition 2018-ZON-101 that rezoned the one parcel north of Bean Creek and three parcels south of Bean Creek, totaling 11.2 acres (See Exhibit B). This petition includes these three parcels and four additional parcels now owned by the petitioner, all south of Bean Creek. The 4.51-acre parcel north of Bean Creek fronting on Raymond Street is not included in this rezoning request but would be included in the overall business operation.

As a result of testimony during the November 16, 2023 hearing, two of the commitments have been amended to clarify the proposed Commitment Number One and respond to remonstrators concerns in amended Commitment Number Five. See below:

1. Except for Parcel No. 1096211 (4.51 acres north of Bean Creek fronting on East Raymond Street), all commitments associated with petition 2018-ZON-100 (Instrument Number A201900003018) shall be replaced by the following six commitments.
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 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. The petitioner will send a copy of the plan to Indiana Forest Alliance, Inc. for their review and comment, prior to final staff approval. In addition, a final approved plan shall be provided to Mr. Robert Harris residing at 2231 S Sherman Drive.

(Continued)

STAFF REPORT 2023-ZON-101 (Continued)

RECOMMENDATIONS

Staff **recommends approval** of this 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. All commitments associated with petition 2018-ZON-100 shall be replaced by the following six commitments.
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 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. A 40-foot half right-of-way shall be dedicated along the frontage of Bethel Avenue, as per the request of the Department of Public Works (DPW), Engineering Division. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of all grants of right-of-way by the DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).
4. The following C-7 uses would be permitted: Agricultural machinery and equipment sales; rental or repair; heavy equipment sales, service or repair; fleet terminals; truck or heavy vehicle sales, rental or repair; mini warehouses /self-storage facility; and commercial parking lot (requires the grant of a Special Exception). All other permitted C-7 uses would be prohibited.
5. A site and landscape plan shall be submitted for Administrator Approval prior to any further disturbance of the site. The site plan shall consider the tree preservation plan, floodplain, stream protection corridor, and right-of-way dedication. The landscape plan shall provide for any necessary tree removal mitigation and enhanced year around landscaping along Bethel Avenue.
6. The entire site shall be brought into compliance with the Ordinance within 180 days from final approval of the rezoning.
7. 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 / receptacles provided for the proper disposal of trash and other waste.

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STAFF REPORT 2023-ZON-101 (Continued)

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

- ◇ This 17.25-acre site, zoned D-3 (FW) (FF), C-7 (FF) and I-3, is bisected by Bean Creek and developed with a semi-truck and tire repair business on the northern portion of the site and single-family dwellings and truck / trailer parking on the southern portion of the site. It is surrounded by industrial uses to the north, zoned I-4; single-family dwellings to the south, across Bethel Avenue, zoned D-3; commercial uses to the east, zoned C-7; and undeveloped land to the west, zoned D-3 (FW) (FF).
- ◇ Petition 2018-ZON-018 rezoned the northern portion along East Raymond Street and three parcels south of Bean Creek to the C-7 (FF)(FW) district to provide for truck repair. Petition 2003-ZON-083 rezoned the northern two parcels to the C-S (FF)(FW) District to provide for a contractor's business.

REZONING

- ◇ This request would rezone the site from the D-3 (FW) (FF), C-7 (FF) Districts to the C-7 classification. "The C-7 District is designed to provide specific areas for commercial uses which have unusually incompatible features relative to other commercial uses, such as major outdoor storage or display of sizeable merchandise and the outdoor parking and storage of trucks, materials or equipment essential to the operation of these uses. Many of these uses generally are not visited by customers, but rather involve service operations from headquarters with some on-site fabrication of parts. The nature of operation or appearance are more compatible with industrial than retail commercial activities. Because of the character and intensity of these uses, this district should be appropriately located on major commercial arterial thoroughfares and near interstate freeways, but not in close association with those commercial activities involving shopping goods, professional services, restaurants, food merchandising, and the like. Due to the intensity of uses, location of this district should never be adjacent to protected districts."
- ◇ The Comprehensive Plan recommends light industrial typology north of Bean Creek. "The Light Industrial typology provides for industrial, production, distribution, and repair uses conducted within enclosed structures and unlikely to create emissions of light, odor, noise, or vibrations. This typology is characterized by freestanding buildings or groups of buildings, often within industrial parks. Typical uses include warehousing, self-storage, assembly of parts, laboratories, wholesaling, and printing. Industrial or truck traffic should be separated from local/residential traffic."

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STAFF REPORT 2023-ZON-101 (Continued)

- ◇ The Comprehensive Plan recommends suburban neighborhood for the site south of Bean Creek. “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.”
- ◇ 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:

Light Industrial Uses

- Industrial truck traffic should not utilize local, residential streets.
- Streets internal to industrial development must feed onto an arterial street.
- Removed as a recommended land use where they would be adjacent to a living or mixed-use typology

Conditions for All Land Use Types (Suburban Neighborhood)

- 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.
- Hydrological patterns should be preserved wherever possible.
- Curvilinear streets should be used with discretion and should maintain the same general direction.
- In master-planned developments, block lengths of less than 500 feet, or pedestrian cut-throughs for longer blocks, are encouraged

Overlays

- ◇ This site is also located within the Environmental Sensitive Areas (ES) overlay, specifically Forest Alliance Woodlands and a 100-year floodplain. “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

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- ◇ As previously noted, Bean Creek bisects this site and enters the site at the northeast corner of the site along East Raymond Street, runs southwesterly and exits the site at the southwest corner. The northern and western portion of this site is covered by high quality woodlands, specifically identified as Forest Alliance Woodlands and generally follows the path of Bean Creek.

Tree Preservation / Heritage Tree Conservation

- ◇ There are significant amounts of natural vegetation and trees located on the northern and western 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.
- ◇ 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 kentuckia*), 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.

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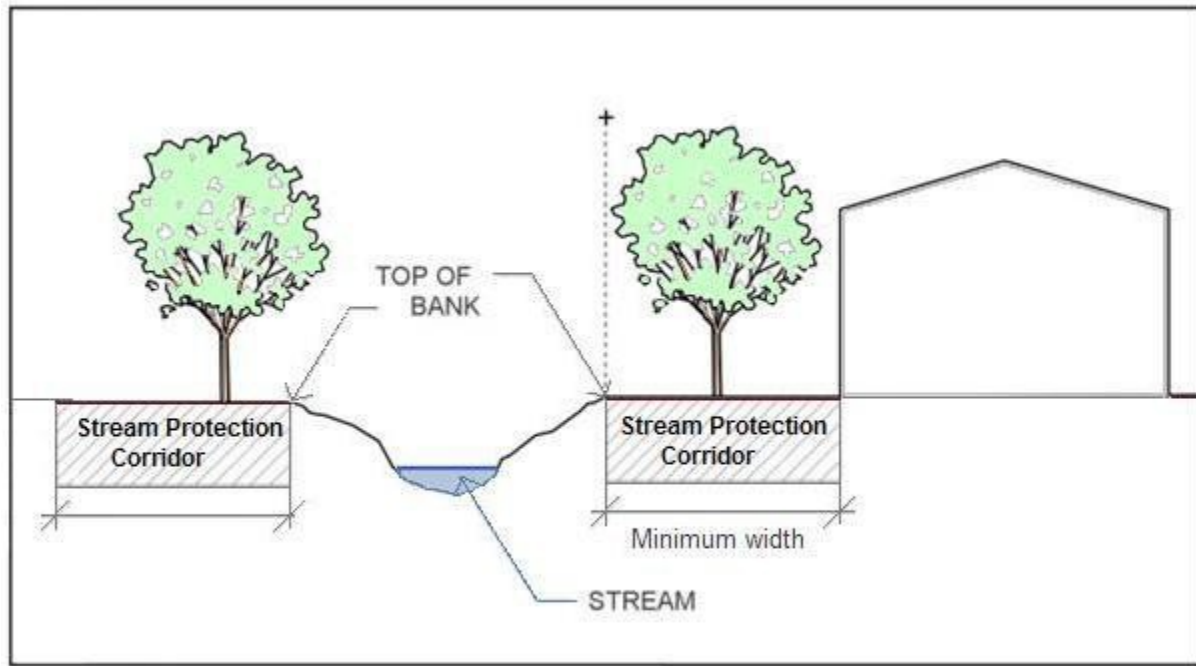
STAFF REPORT 2023-ZON-101 (Continued)

- ◇ 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.”
- ◇ 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. Bean Creek 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.
- ◇ Bean Creek bisects the site, is designated as a Category One Stream within the Metro Context Area and is required to have a 100-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

Floodway Fringe

- ◇ Portions of this site has a secondary zoning classification of a Floodway Fringe (FF), which 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 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 (C-7 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.
- ◇ Staff would note that certain uses are **prohibited in the floodplain, including “truck, train, or bus terminal, storage or maintenance facility,”** which is the proposed use with this rezoning. Consequently, those areas of the site that lie within the floodplain could not be developed as proposed.

Department of Public Works

- ◇ The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 40-foot half right-of-way along Bethel Avenue. This dedication would also be consistent with the Marion County Thoroughfare Plan.
- ◇ The right-of-way along Bethel Avenue varies from 70 feet to 90 feet. The dedication requested would occur between the western property boundary and the existing 90-foot right-of-way along Bethel Avenue frontage, which would be approximately 775 feet to the southeast.

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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
 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 receptables for proper disposal of trash and other waste.

Planning Analysis

- ◇ As proposed, the portion of the site south of Bean Creek would not be consistent with the Comprehensive Plan recommendation of suburban neighborhood typology. However, it would be unlikely that this area would be residentially developed given the proximity of industrial and heavy commercial uses to the east. Furthermore, petition 2018-ZON-100 rezoned 11.2 acres of this site to the C-7 district. The additional six acres included in this request would be an acceptable deviation from the Plan recommended land use, with certain mitigation requirements.

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STAFF REPORT 2023-ZON-101 (Continued)

- ◇ Staff also believes the impact of the C-7 district on the adjacent residential uses to the south, across Bethel Avenue, would be minimized by excluding most of the permitted uses. The petitioner has agreed to limit use of the site to the following uses: Agricultural machinery and equipment sales; rental or repair; heavy equipment sales, service or repair; fleet terminals; truck or heavy vehicle sales, rental or repair; mini warehouses /self-storage facility; and commercial park lot (requires the grant of a Special Exception). All other permitted C-7 uses would be prohibited.
- ◇ Additionally, staff would request a 40-foot transitional setback along Bethel Avenue from the proposed right-of-way. The Ordinance requires a 20-foot transitional setback, but staff would request a wider, heavily landscaped year around setback to provide undeveloped space that would result in a substantial buffer for the residential uses to the south, across Bethel Avenue.
- ◇ On the site visit, staff observed the installation of a 10-foot-tall chain link fence and removal of trees along Bethel Avenue. Previous aerials also indicate that the existing drive on Bethel Avenue has been widened and the interior drive alignment has changed. Staff, however, was unable to find any permits related to the access drive.
- ◇ Permits are not required for fence installation, but the Ordinance limits the fence height to six feet. Additionally petition 2018-ZON-100 required “a tree assessment by a certified arborist shall be filed for Administrator’s Approval prior to any site preparation or disturbance of the site as a commitment,” which has not been submitted.
- ◇ Staff was also unable to locate a sign permit for the sign along Raymond Street that does not comply with the Sign Regulations.
- ◇ Consequently, staff requests that the entire site be brought into compliance with the Ordinance and the commitments associated with the previous petition, within 180 days from the final approval date of the rezoning. This would also include required paving of driveways and areas where vehicles / trailers / equipment are stored.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-3 (FW) (FF), C-7 (FF) / I-3	Commercial uses / residential
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SURROUNDING ZONING AND LAND USE

North -	I-4	Industrial uses
South -	D-3	Single-family dwellings
East -	C-7	Commercial uses
West -	D-3 (FW) (FF)	Undeveloped land

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STAFF REPORT 2023-ZON-101 (Continued)

COMPREHENSIVE PLAN	<p>The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends light industrial typology for the northern portion and suburban neighborhood typology for the southern portion.</p> <p>Marion County Land Use Pattern Book (2019).</p>
THOROUGHFARE PLAN	<p>This portion of East Raymond Street is designated in the Marion County Thoroughfare Plan as a primary arterial, with an existing 230-foot right-of-way and a proposed 102-foot right-of-way.</p> <p>This portion of Bethel Avenue is designated in the Marion County thoroughfare Plan as a primary collector with a variable 70-foot to 90-foot right-of-way and a proposed 80-foot right-of-way</p>
CONTEXT AREA	<p>This site is located within the metro context area.</p>
OVERLAY	<p>This site is located within the environmentally sensitive areas</p>

ZONING HISTORY

2018-ZON-100; 3905 East Raymond Street, requested rezoning of 11.2 acres from the C-S (FF)(FW) and D-3 districts to the C-7 (FF)(FW) classification, **approved**.

VICINITY

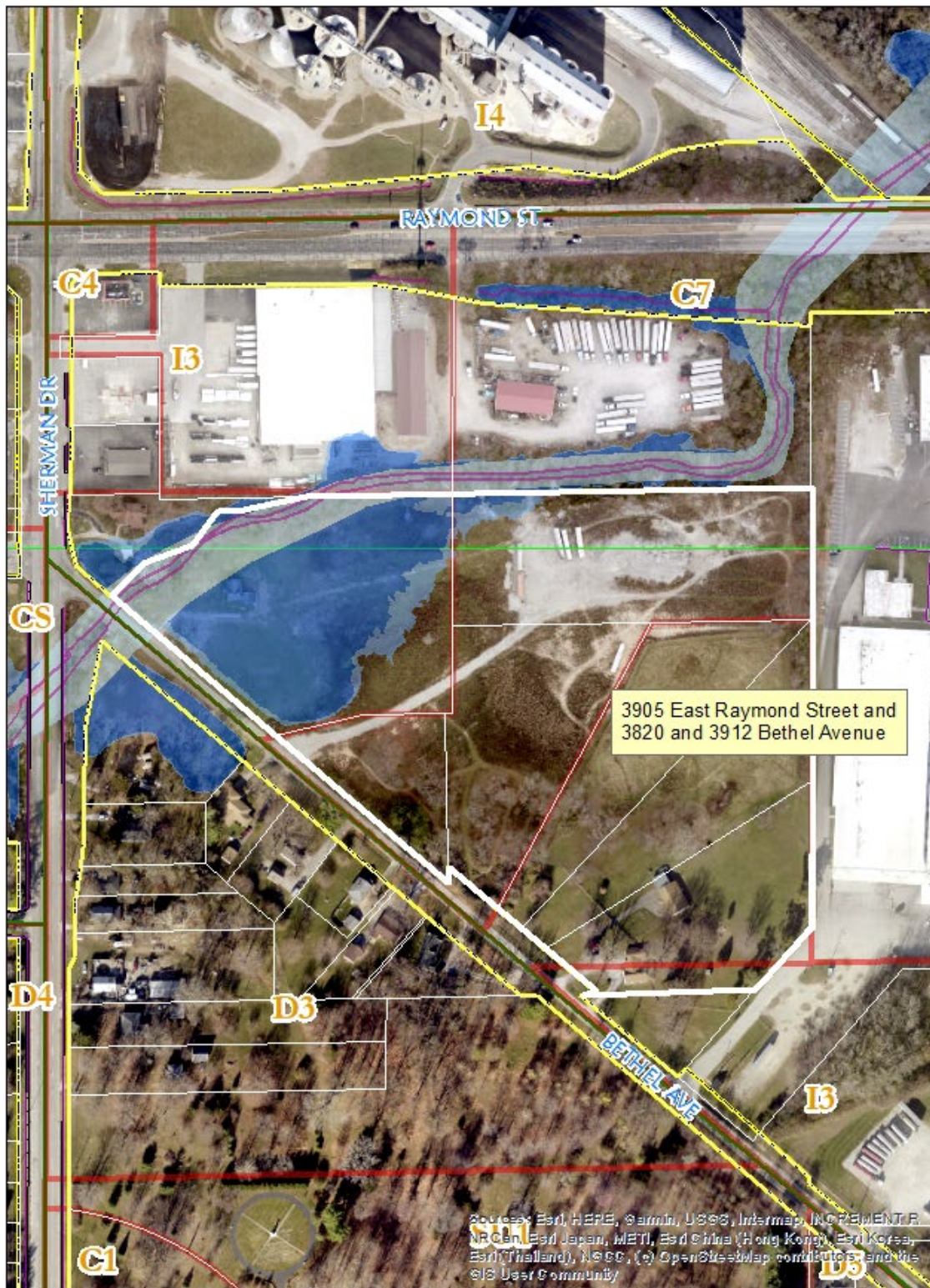
2011-ZON-038; 2319 South Sherman Drive (south of site), requested rezoning from the D-3 and C-4 Districts to the C-4 classification to provide commercial uses, **approved**.

2003-ZON-083; 3853 East Raymond Street (west of site), requested rezoning of 16.77 acres, being in the D-3 (FF)(FW) District to the C-S (FF)(FW) classification to provide for a contractor's business, **approved**.

2000-ZON-014; 2221 South Sherman Drive (west of site), requested rezoning of 1.082 acres, from the D-3 district to the C-4 classification to provide for a tavern, **approved**.

96-Z-255; 3829 East Raymond Street, (west of site), requested rezoning of 4.33 acres from the D-3 (FF)(FW) District to the I-3-U (FF)(FW) classification, **approved**.

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3905 East Raymond Street / 3820 and 3912 Bethel Avenue



0.0125025 0.05 0.075 0.1 Miles

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



View of northern entrance to site looking east along Raymond Street



View of site looking east



View of site looking east



View from site looking north towards Raymond Street



View from site looking northwest at adjacent property.



View looking east along Bethel Avenue



View looking west along Bethel Avenue



View of site looking north across Bethel Avenue



View of site looking north across Bethel Avenue



View of site looking north across Bethel Avenue



View of site looking north across Bethel Avenue



View of site looking north across Bethel Avenue



View of site looking northwest from adjacent drive to the east



View of site looking west from adjacent drive to the east