



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

March 28, 2024

Case Number: 2024-ZON-007
Property Address: 3000 North German Church Road
Location: Warren Township, Council District #15
Petitioner: Hession Properties, LLC, by Silvia B. Miller
Current Zoning: C-3 (FW)(FF)
Request: Rezoning of 9.8 acres from the C-3 (FW)(FF) district to the C-5 (FW)(FF) district to provide for heavy commercial uses.
Current Land Use: Undeveloped land)
Staff Recommendations: Denial, subject to the following commitments, if approved:
Staff Reviewer: Kathleen Blackham, Senior Planner

PETITION HISTORY

The Hearing Examiner acknowledged the automatic continuance filed by a registered neighborhood organization that continued this petition from the February 29, 2024 hearing, to the March 28, 2024 hearing.

STAFF RECOMMENDATION

Denial. If approved, staff would request the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. Final site plan shall be submitted for Administrator Approval prior to any land disturbance and the issuance of an Improvement Location Permit.
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 59.5-foot half right-of-way shall be dedicated along the frontage of North German Church Road, 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).

PETITION OVERVIEW

This 9.8-acre site, zoned C-3 (FW)(FF), is undeveloped and surrounded by a single-family dwelling to the north, zoned D-A (FF); undeveloped land to the south, across East 30th Street, zoned C-3 (FW)(FF); residential uses to the east, across North German Church Road, zoned D-3 and D-5II; and public park land to the west, zoned D-A (FW).

REZONING

This request would rezone the site from a C-3 (FW)(FF) (neighborhood commercial) district to a C-5 (FW)(FF) (general commercial) district. "The C-5 District is designed to provide areas for those retail sales and service functions whose operations are typically characterized by automobiles, outdoor display, or sales of merchandise; by major repair of motor vehicles; by outdoor commercial amusement and recreational activities; or by activities or operations conducted in buildings or structures not completely enclosed. The types of uses found in this district tend to be outdoor functions, brightly lit, noisy, etc. Therefore, to provide a location where such uses can operate in harmony with the vicinity, the C-5 district should be located on select heavy commercial thoroughfares and should avoid locating adjacent to protected districts."

The Comprehensive Plan recommends suburban neighborhood typology. "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."

Overlays

This site is also located within an overlay, specifically the Environmentally Sensitive Areas (ES) Overlay. "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.

Much of this site is covered by high quality woodlands, specifically identified as Forest Alliance Woodlands.

Tree Preservation / Heritage Tree Conservation

There are significant amounts of natural vegetation and trees located on the entire 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 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.



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 (C-5 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.

Department of Public Works

The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 59.5-foot half right-of-way along North German Church Road. This dedication would also be consistent with the Marion County Thoroughfare Plan.

Staff strongly recommends denial of this request for several reasons. The Comprehensive Plan recommends suburban neighborhood, and the request would be for an intense commercial use that would have a negative impact on the surrounding area that includes a much less intense commercial use, residential uses and an abutting public park.

The request would in total conflict with the Pattern Book recommendations related to commercial uses within the suburban neighborhood typology.

The C-5 district would also have a detrimental and negative impact on the high-quality woodlands and floodplain that cover most of the site. It would be reasonable to assume that, if approved, the site would be cleared and the trees destroyed.

The only commercial use in this primarily residential area is the commercial strip center located at the southeast corner of the intersection of North German Church Road and East 30th Street. That commercial center is included in the D-P located to the east and south and limited to C-3 uses, with 28 excluded commercial uses. In other words, the existing commercial uses are low intense, serve the surrounding residential uses and are minimally intrusive. A C-5 district in this area would be wholly inappropriate and unacceptable.

GENERAL INFORMATION

Existing Zoning	C-3 (FW)(FF)	
Existing Land Use	Undeveloped	
Comprehensive Plan	Suburban Neighborhood typology	
Surrounding Context	Zoning	Land Use
	North: D-A ((FF)	Single-family dwelling
	South: C-3 (FF)	Undeveloped land
	East: D-3 / D-5II	Residential development
	West: D-A (FW)(FF)	Public park land
Thoroughfare Plan		
North German Church Road	Primary Arterial	Existing 105-foot right-of-way and a proposed 119-foot right-of-way.
East 30th Street	Secondary Arterial	Existing 90-foot right-of-way and a proposed 80-foot right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	Yes Grassy Creek	
Overlay	Yes - Environmentally sensitive overlay	
Wellfield Protection Area	No	
Site Plan	N/A	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	N/A	
Findings of Fact (Amended)	N/A	
C-S/D-P Statement	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends suburban neighborhood typology. 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.

Pattern Book / Land Use Plan

- The Comprehensive Plan consists of two components that include the Pattern Book and the land use map. The Pattern Book provides a land use classification system that guides the orderly development of the county and protects the character of neighborhoods while also being flexible and adaptable to allow neighborhoods to grow and change over time.
- The Pattern Book serves as a policy guide as development occurs. Below are the relevant policies related to this request:
- *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.
 - 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.
- *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).*
 - 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.
 - Should be located at the intersections of arterial streets and should be no closer than one mile to another commercial node with one acre or more of commercial uses except as reuse of a historic building.
 - Should be limited to an aggregate of 3.5 acres per intersection, with no one corner having more than 1.5 acres.
 - Should be limited to areas and parcels with adequate space for required screening and buffering.
 - Automotive uses (such as gas stations and auto repair) and uses requiring a distance of separation of greater than 20 feet under the zoning ordinance (such as liquor stores, adult uses, and drive-through lanes) are excluded.

- Should not include outdoor display of merchandise.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

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)

- The Marion County Thoroughfare Plan (2019) “is a long-range plan that identifies the locations classifications and different infrastructure elements of roadways within a defined area.”
- The following listed items describes the purpose, policies and tools:
 - Classify roadways based on their location, purpose in the overall network and what land use they serve.
 - Provide design guidelines for accommodating all modes (automobile, transit, pedestrians, bicycles) within the roadway.
 - Set requirements for preserving the right-of-way (ROW)
 - Identify roadways for planned expansions or new terrain roadways
 - Coordinate modal plans into a single linear network through its GIS database

ZONING HISTORY

2021-ZON-046; 3125 North German Church Road (east of site), requested rezoning of 18 acres from the D-3 district to the D-5II district, **approved**.

2019-CZN-812 / 2019-CPL-812; 3130 North German Church Road (east of site), requested rezoning of two acres from the D-3 district to the C-S district to provide for a convenience store / gasoline station, C-1, MU-1 and C-3 uses, with the following excluded uses: daily emergency shelter; check cashing or validation service; outdoor advertising sign; tattoo parlor; bar or tavern; pawn shop; wireless communications facility; plasma blood center; vape shops; bed and breakfast; liquor store; club or lodge; substation and utility distribution facility; amateur radio antenna; group home; artisan manufacturing; light manufacturing; temporary outdoor display and sales (not including produce sales); portable storage; and temporary outdoor event and approval of a Subdivision Plat to be known as Re-plat of Lots One and Two in Brinkman Farms Subdivision, dividing 20 acres into two lots, **withdrawn**.

2009-ZON-081; 2800 German Church Road (south of site), requested the rezoning of 24 acres from the SU-3 district to the SU-1 district, **withdrawn**.

2007-ZON-027; 2825 German Church Road (south of site), requested the rezoning of 27 acres from the D-P district to the D-P district to provide for 60 units in four-unit buildings and 40 single-family dwellings for a density of 3.7 units per acre, **approved**.

2003-ZON-164; 2825 German Church Road (south of site), requested the rezoning of 32 acres from the D-A district to the D-P district to provide for five acres of commercial development and 27 acres of multi-family dwellings for a density of four units per acre, **approved**.

2000-ZON-844 / 2000-VAR-844; 10990 East 30th Street (southwest of site), requested the rezoning of 0.448 acre from the D-A district to the C-3 district and variances of development standards to provide for a sign with a deficient setback and within the clear sight triangle, vehicle maneuvering in the right-of-way of 30th Street, parking in the front transitional yard and to legally establish a building in the proposed right-of-way, **approved**.

950-Z-100; 11550 East 30th Street (east of site), requested rezoning of 119.4 acres from the D-A (FF) district to the D-3 (FF) classification to provide for single-family residential development, **approved**.

94-Z-186; 10870 East 30th Street (southwest of site), requested the rezoning of 12 acres from the D-A district to the C-3 district, **denied**.



Department of Metropolitan Development
Division of Planning
Current Planning

92-Z-128; 2702 German Church Road (southeast of site), requested the rezoning of 24.26 acres from the D-A and SU-1 districts to the SU-3 district, **approved**.

88-Z-124; 11128 East 30th Street (east of site), requested the rezoning of 17.5 acres from the A-2 district to the D-4 district, **approved**.

72-Z-310; 10920 East 30th Street (west of site), requested the rezoning of 9.79 acres from the A-2 district to the C-3- district, **approved**.

EXHIBITS

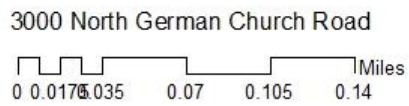
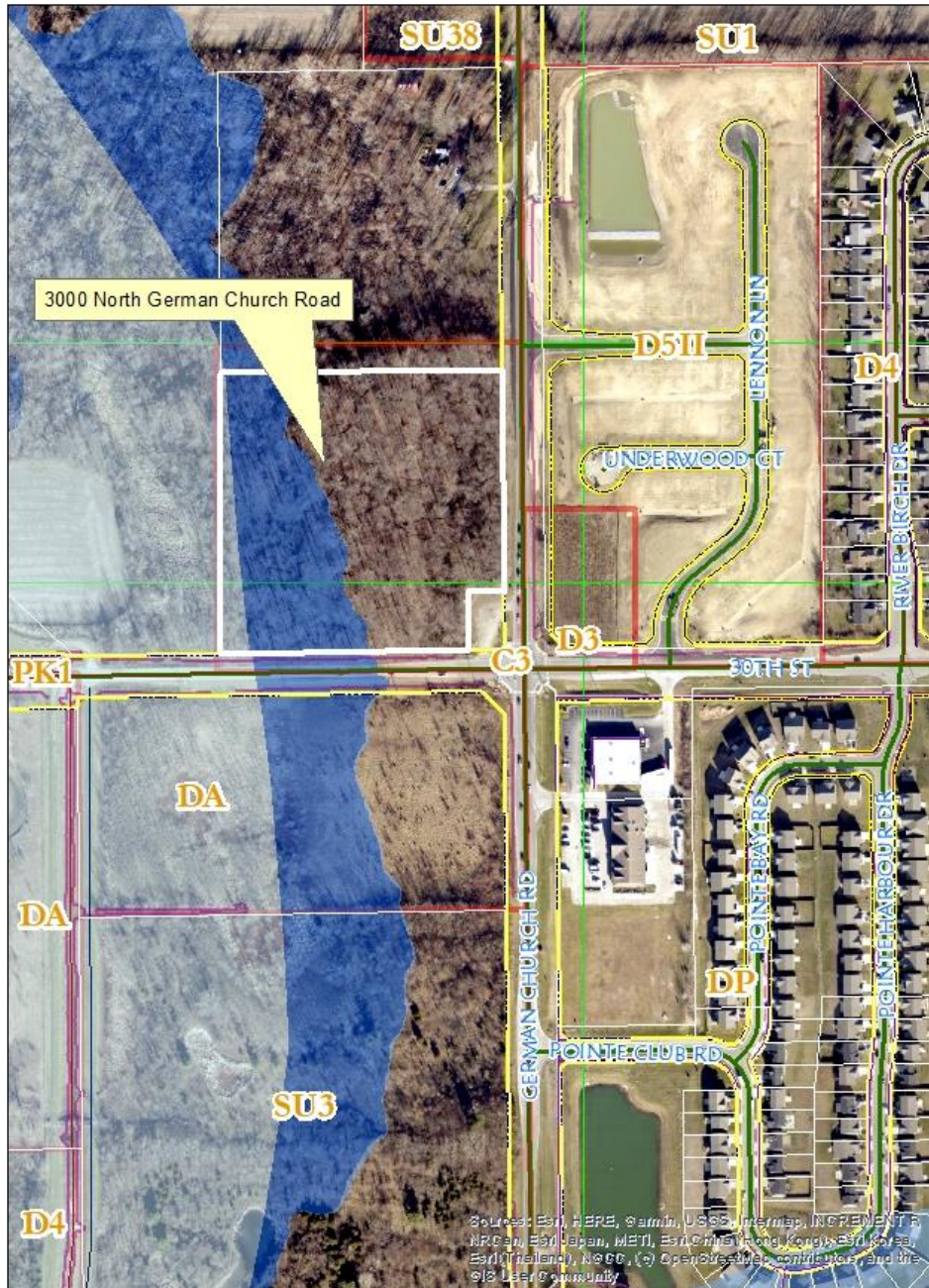
EXHIBIT A

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.

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 looking south along North German Church Road



View looking northwest across intersection of North German Church Road and East 30th Street



View of site looking west across North German Church Road



View of site looking north across East 30th Street