

FACT SHEET

Case #REZ-2017-0036

Bill # Z-17-08-21

Project Start: 22 August 2017

APPLICANT:	Bradley D. Spitnale/Catalyst Fitness
REQUEST:	To rezone property from R2/Two Family Residential to C2/Limited Commercial to allow the structure to be used for an audio/visual business.
LOCATION:	The rezoning site is the Summit City Fitness property. The address of the subject property is 5928 Trier Road (Section 28 of St. Joseph Township).
LAND AREA:	Approximately 2.3 acres
PRESENT ZONING:	R2/Two Family Residential
PROPOSED ZONING:	C2/Limited Commercial
COUNCIL DISTRICT:	1-Paul Ensley
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

13 November 2017 Public Hearing

- No one spoke at the hearing in favor or opposition.
- Staff recommended Do Pass w/Written Commitment
- Tom Freistroffer, Mike Bynum, and Billy Davenport were absent.

20 November – Business Meeting

Defer 30 days to work on Written Commitment

18 December 2017 – Business Meeting

Plan Commission Recommendation: Do Pass w/Written Commitment

A motion was made by Tom Frieistroffer and seconded by Paul Sauerteig to return the ordinance to Common Council for their final decision.

9-0 MOTION PASSED

- All members were present.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
8 March 2018

Reviewed by:



Kimberly R. Bowman
Executive Land Use Director

PROJECT SUMMARY

- Board of Zoning Appeals action on the site includes: approval of an indoor racquetball club, a private tennis club open to the public, and a two-chair beauty salon.

The site is located on the south side of Trier Road just to the east of the entrance/exit to Walden. The site in recent years has been utilized as Summit City Fitness. The petitioner is requesting to rezone approximately 2.3 acres of property to C2/Limited Commercial from R2/Two Family Residential. The structure itself is zoned residentially, as is a portion of the parking lot. As mentioned, the Fort Wayne Board of Zoning Appeals has approved non-residential uses at this site. Approximately one acre of the site is already zoned C2/Limited Commercial, including the easternmost portion of parking lot and grassed greenspace.

When the proposal was submitted to staff, the request was for audio and visual sales, primarily oriented towards churches. However at the public hearing, Jason Minnich, representing Catalyst Fitness, stated that the original proposal fell through and he is planning to buy the property to keep it as a fitness center. This use is permitted within the C2 zoning district, as is the parking lot. The site today has a solid board fence with surrounds the building along the west and south property lines. Landscape materials are also in place, which lessens the impact of the commercial uses on the site.

As mentioned, there is no development plan associated with this request and there are no structures proposed for this site at this time. The main purpose of the rezoning is to allow the proposed use to be permitted and not require Board of Zoning Appeals approvals for building additions, signage, and any improvements to the parking area. Rezoning this property to C2 would be compatible with adjacent zoning. Staff recommended the use of a written commitment to run with the rezoning. The C2 district includes a number of uses, and the applicant may consider prohibiting uses that may not be compatible with adjacent single family residential subdivisions.

PUBLIC HEARING SUMMARY:

Presenter: Jason Minnich, owner of Catalyst Fitness.

Public Comments:

None

During a 30-day deferral, Mr. Minnich worked with the current owner of the property to submit a Written Commitment to restrict certain commercial uses on the property.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition REZ-2017-0036

APPLICANT:	Bradley D. Spitnale
REQUEST:	To rezone property from R2/Two Family Residential to C2/Limited Commercial to allow the structure to continue to be used for a fitness center.
LOCATION:	The rezoning site is the Summit City Fitness property. The address of the subject property is 5928 Trier Road (Section 28 of St. Joseph Township).
LAND AREA:	Approximately 2.3 acres
PRESENT ZONING:	R2/Two Family Residential
PROPOSED ZONING:	C2/Limited Commercial

The Site Committee recommends a “Do Pass” for Rezoning Petition REZ-2017-0036, with a written commitment for the following reasons:

1. Approval of the rezoning request will be in substantial compliance with City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The general area surrounding the site is a mixture of residential and commercially zoned property. A portion of the property is already zoned C2. This rezoning continues the trend of responsible mixed-used development.
2. Approval of the request will not have an adverse impact on the current conditions in the area, or the character of current structures and uses in the area. The existing structure will continue to be utilized for a fitness center. The rezoning will bring the entire property into a zoning district which permits the use of the site.
3. Approval is consistent with the preservation of property values in the area. This proposal would allow for continued business growth and investment on the site. No additional changes are proposed to the existing building at this time.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. This proposal is not proposing extension of infrastructure. Public right-of-way with an improved street and public utilities are presently adjacent to the site.

These findings approved by the Fort Wayne Plan Commission on November 20, 2017.



Kimberly R. Bowman, AICP
Executive Director
Secretary to the Commission

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made as of this 12 day of Feb, 2018, by Bradley D. Spitnale, ("Declarant"), under the following circumstances:

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 3.23 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit A (the "Real Estate"); and

WHEREAS, Declarant's Zoning Map Amendment Application, filed with the City of Fort Wayne Plan Commission (the "Plan Commission"), bearing number REZ-2017-0036 (the "Application"), respecting the Real Estate, has been approved by the City of Fort Wayne, Indiana Common Council and the Mayor of the City of Fort Wayne; and

WHEREAS, pursuant to the Application, the Real Estate has been rezoned to C2 pursuant to the City of Fort Wayne Zoning Ordinance (the "Ordinance") which permits development upon the Real Estate of certain professional office and personal service uses and limited and retail commercial uses; and

WHEREAS, Declarant has submitted this Commitment, voluntarily, pursuant to section 157.503 of the Ordinance and Indiana Code 36-7-4-1015 for the purpose of limiting certain off site impacts and certain uses arising from development upon the Real Estate; and

WHEREAS, in conjunction with said Application, the Plan Commission has required the execution of this Commitment and its recordation with the Allen County, Indiana, Recorder's Office prior to the commencement of any building improvements for uses permitted pursuant to the Application.

NOW, THEREFORE, in consideration of the above and foregoing recitals, Declarant hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon Declarant and all future owners of the Real Estate, and all lessees of all or a portion of the Real Estate.

1. Use Limitations. The following specific uses, which are otherwise allowed in the C2 zoning district, shall be prohibited upon the Real Estate:

- [1] Air conditioning sales
- [2] Animal kennel

- [3] Animal obedience school
- [4] Arcade
- [5] Automobile accessory store
- [6] Automobile rental (indoor)
- [7] Automobile sales (indoor)
- [8] Automatic teller machine
- [9] Bar or tavern
- [10] Billiard or pool hall
- [11] Bingo establishment
- [12] Blood bank
- [13] Blood or plasma donor facility
- [14] Boarding/lodging house
- [15] Bowling alley
- [16] Cigarette/tobacco/cigar store
- [17] Club, private
- [18] Coin shop
- [19] Collection agency
- [20] Convenience store
- [21] Correctional services facility
- [22] Drug store
- [23] Entertainment facility
- [24] Fireworks sales
- [25] Flea market
- [26] Fraternity house
- [27] Haunted house
- [28] Heating sales
- [29] Homeless/emergency shelter(2)
- [30] Hotel
- [31] Laundromat/coin operated laundry
- [32] Micro or mini-brewery/brewpub
- [33] Motel
- [34] Package liquor store
- [35] Public transportation or similar public facility
- [36] Reception/banquet hall
- [37] Rescue mission
- [38] Residential facility for homeless individuals(2)

- [39] Restaurant with drive-through
- [40] Sorority house
- [41] Tire sales
- [42] Treatment center
- [43] Zoo

The following special uses are also prohibited on the real estate:

- a) Automobile maintenance (quick service)
- b) Commercial communication tower (see § 157.503(D)(3)(a) for additional standards)
- c) Gas station
- d) Group residential facility (large) (if adjacent to a residential district)
- e) Homeless/emergency shelter (if adjacent to a residential district, or accessory to a religious institution)
- f) Manufactured home, Type II (see § 157.503(D)(3)(e) for additional standards)
- g) Religious institution or non-public school illuminated athletic field(s)
- h) Residential facility for a court-ordered re-entry program
- i) Residential facility for homeless individuals (if adjacent to a residential district)
- j) Shooting range (indoor)

2. Site Lighting. Any new wall mounted light fixtures will be full cut-off in nature.

3. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of all persons who own property comprising the Real Estate, their successors and assigns, and shall also inure to the benefit of the Zoning Administrator of the City of Fort Wayne and the Plan Commission. This Commitment and the restrictions and limitations set forth herein shall run with the Real Estate, and any conveyance thereof, shall be binding upon Declarant and its successors and assigns as owners of the Real Estate.

4. Enforcement Rights. The City of Fort Wayne Zoning Administrator (the “Zoning Administrator”) and the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of an obligation in this Commitment; and in the event such an enforcement action is commenced, the Zoning Administrator or the Plan Commission (as applicable) shall have the remedies allowed by the Ordinance (or the ordinance governing the Real Estate at the time of the enforcement action) and I.C. §36-7-4-1015, which remedies shall be cumulative and not exclusive. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Zoning Administrator or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

5. Amendment or Termination. This Commitment may be amended or terminated upon application by an owner of the Real Estate and only with the prior written consent of all owners of the Real Estate and the Plan Commission, following a public hearing to consider said amendment or termination.

6. Remedies. In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Commitment, without the necessity of proof of actual damage, in the event of an actual breach or violation, or threatened breach or violation, of any restriction or covenant under this Commitment. Such remedies shall be cumulative and nonexclusive, and shall be afforded to any owner of property which comprises all or a portion of the Real Estate, the Zoning Administrator of the City of Fort Wayne and the Plan Commission.

7. Permits. No permits shall be issued under the Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County Recorder. The Declarant shall deliver to the Zoning Administrator and the Plan Commission an executed and recorded copy of this Commitment.

8. Severability. Each covenant or restriction contained in any paragraph of this Commitment shall be severable and separate, and if any court shall rule that any particular restriction or covenant is unenforceable, such ruling shall not affect the enforceability of any other restriction or covenant under this Commitment, and such other restriction or covenant shall be enforced.

9. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

10. Effective Date. This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

11. Last Deed of Record. The last deed of record for the Real Estate was recorded in the Office of the Recorder of Allen County, Indiana as Document Number _____.

12. Statutory Authority. This Commitment is made pursuant to I.C. §36-7-4-1015(a)(2).

[SIGNATURE AND EXHIBIT PAGES FOLLOW]

"DECLARANT"

BRADLEY D. SPITNALE

Name: Bradley D. Spitnale

STATE OF ~~INDIANA~~ ^{Ohio})
) SS:
COUNTY OF Defiance)

Before me, the undersigned, a Notary Public, in and for said County and State, this 12th day of February, 2018, personally appeared Brad Spitnale, and acknowledged the execution of the foregoing instrument for and on behalf of said company.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Adam A. Fritz, Notary Public

My Commission Expires: 2-9-19

My County of Residence: Defiance



Adam A. Fritz
Notary Public, State of Ohio
My Commission Expires 2-9-19

THIS INSTRUMENT prepared by: Michelle Wood, Department of Planning Services

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Michelle Wood

When recorded, return to: _____

1 **REZ-2017-0036**
2 **BILL NO. Z-17-08-21**

3 **ZONING MAP ORDINANCE NO. Z-_____**

4 **AN ORDINANCE amending the City of Fort Wayne**
5 **Zoning Map No. U-22 (Sec. 28 of St. Joseph Township)**

6 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
7 INDIANA:

8 SECTION 1. That the area described as follows is hereby designated a C2 (Limited
9 Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
10 Wayne, Indiana:

11 **PARCEL I:**

12 Part of the Southeast Quarter of Section 28, Township 31 North, Range 13 East, Allen
13 County, Indiana, more particularly described as follows:

14 Commencing at the Northeast corner of the Southeast Quarter of Section 28, Township 31
15 North, Range 13 East; thence along the North line of the Southeast Quarter of Section 28,
16 North 89 degrees 03 minutes West a distance of 1025.0 feet to the Point of Beginning;
17 thence South 0 degrees 57 minutes West a distance of 330.0 feet; thence North 89 degrees 03
18 minutes West a distance of 295 feet; thence North 0 degrees 57 minutes East a distance of
19 330.0 feet to a point on the North line of the Southeast Quarter of Section 28; thence along
20 said North line South 89 degrees 03 minutes East a distance of 295 feet to the Point of
21 Beginning, containing 2.23 acres, more or less.

22 **PARCEL II:**

23 Part of the Southeast Quarter of Section 28, Township 31 North, Range 13 East, Allen
24 County, Indiana, more particularly described as follows:

25 Commencing at the Northeast corner of the Southeast Quarter of Section 28, Township 31
26 North, Range 13 East; thence along the North line of the Southeast Quarter of said Section
27 28, North 89 degrees 03 minutes West a distance of 893.0 feet to the Point of Beginning;
28 thence South 0 degrees 57 minutes West a distance of 330.0 feet; thence North 89 degrees 03
29 minutes West a distance of 132.0 feet; thence North 0 degrees 57 minutes East a distance of
30 330.0 feet to a point on the North line of the Southeast Quarter of Section 28; thence along
31 said North line South 89 degrees 03 minutes East a distance of 132.0 feet to the Point of
32 Beginning, containing 1.00 acres of land.

33 and the symbols of the City of Fort Wayne Zoning Map No. U-22 (Sec. 28 of St. Joseph
34 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
35 Wayne, Indiana is hereby changed accordingly.

36 SECTION 2. If a written commitment is a condition of the Plan Commission's

1 recommendation for the adoption of the rezoning, or if a written commitment is modified and
2 approved by the Common Council as part of the zone map amendment, that written
3 commitment is hereby approved and is hereby incorporated by reference.

4
5 SECTION 3. That this Ordinance shall be in full force and effect from and after its
6 passage and approval by the Mayor.

7 _____
Council Member

8 APPROVED AS TO FORM AND LEGALITY:

9
10 _____
Carol T. Helton, City Attorney

Department of Planning Services

Rezoning Petition Application

Applicant

Applicant Bradley D. Spitnale
 Address 273 Oak Ridge Ln
 City Defiance State OH Zip 43512
 Telephone 260-579-7777 E-mail bradspitnale@gmail.com

Contact Person

Contact Person Stephanie Sowers
 Address 1236 Westwind Pl
 City Fort Wayne State IN Zip 46845
 Telephone 419-439-0885 E-mail stephsowers@gmail.com

All staff correspondence will be sent only to the designated contact person.

Request

☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
 Address of the property 5928 Trier Rd
 Present Zoning R2 Proposed Zoning C2 Acreage to be rezoned 3.23
 Proposed density N/A units per acre
 Township name St Joseph Township section # 28
 Purpose of rezoning (attach additional page if necessary) Please see attached

Sewer provider City of Ft. Wayne Water provider City of Ft. Wayne

Filing Requirements

Applications will not be accepted unless the following filing requirements are submitted with this application. Please refer to checklist for applicable filing fees and plan/survey submittal requirements.

- ☐ Applicable filing fee
- ☐ Applicable number of surveys showing area to be rezoned (plans must be folded)
- ☐ Legal Description of parcel to be rezoned
- ☐ Rezoning Questionnaire (original and 10 copies) County Rezonings Only

I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan Commission as those provisions, procedures and policies related to the handling and disposition of this application; that the above information is true and accurate to the best of my/our knowledge; and that I/we agree to pay Allen County the cost of notifying the required interested persons at the rate of \$0.85 per notice and a public notice fee of \$50.00 per Indiana code.

(printed name of applicant)

(signature of applicant)

(date)

(printed name of property owner)

(signature of property owner)

(date)

BRAD D. SPITNALE
 (printed name of property owner)

(signature of property owner)

(date)

REC

124675

7-26-17
 (date)

Purpose of Rezoning:

We are looking at selling our building on 5928 Trier Rd Fort Wayne, IN 46815. This building currently is being used for Summit City Fitness, but is zoned R2.

We have a potential buyer that would like to use the space for their audio visual business. They specialize in installing audio visual systems in churches around the nation. The building would house their offices, showroom, and warehouse.

We believe that for their use, this lot would need to be zoned C2.

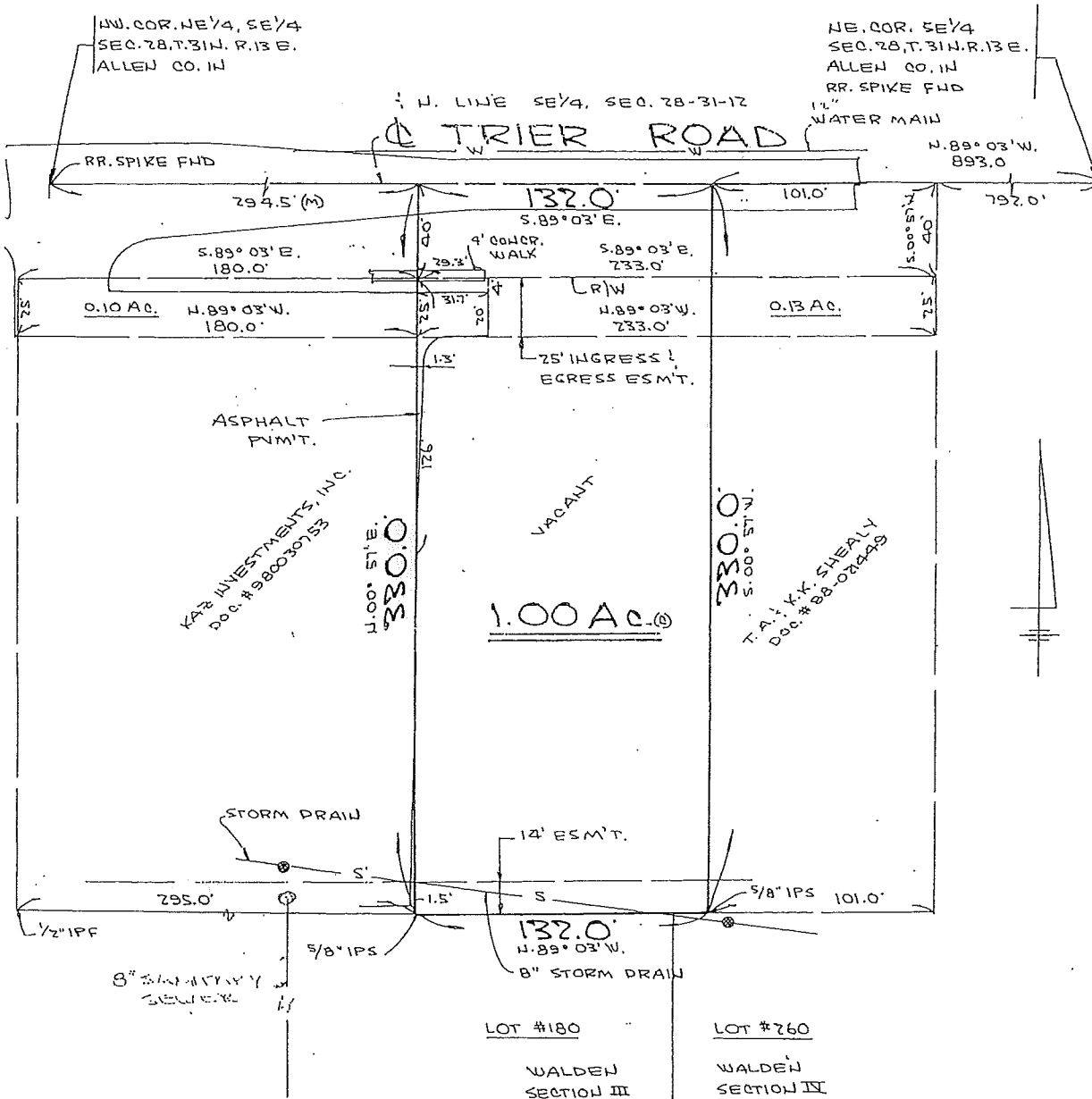
CERTIFICATE OF SURVEY

GREGORY L. ROBERTS PLS S0548 IN
KENNETH W. HARRIS PLS 9500021 IN

DONOVAN ENGINEERING INC
2020 INWOOD DRIVE
EXECUTIVE PARK
FORT WAYNE, INDIANA 46815

JOHN R. DONOVAN PE 9173 PLS 9921 IN
FRANCIS X. MUELLER PLS S0193 IN

The undersigned has made a re-survey of the real estate located in ALLEN County, Indiana, as shown and described below. The description of the real estate is as follows: **SEE ATTACHED SHEET!**



Job No. 28
Job for: SHEALY-K&B INV. INC.

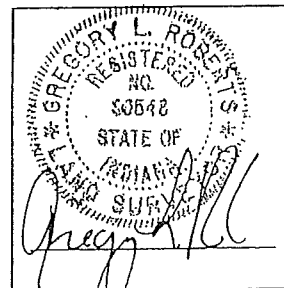
Date: 12-16-98

LEGEND
IPF Iron Pin Found
PF Iron Pipe Found
IPS 5/8" re-bar set (with cap stamped #0027)
PK P.K. Nail
(M) Measured
(R) Recorded
(C) Calculated

All monuments are at grade except as noted.
All property line distances are recorded dimensions, except as noted.
Monuments found have no documented history, except as noted.

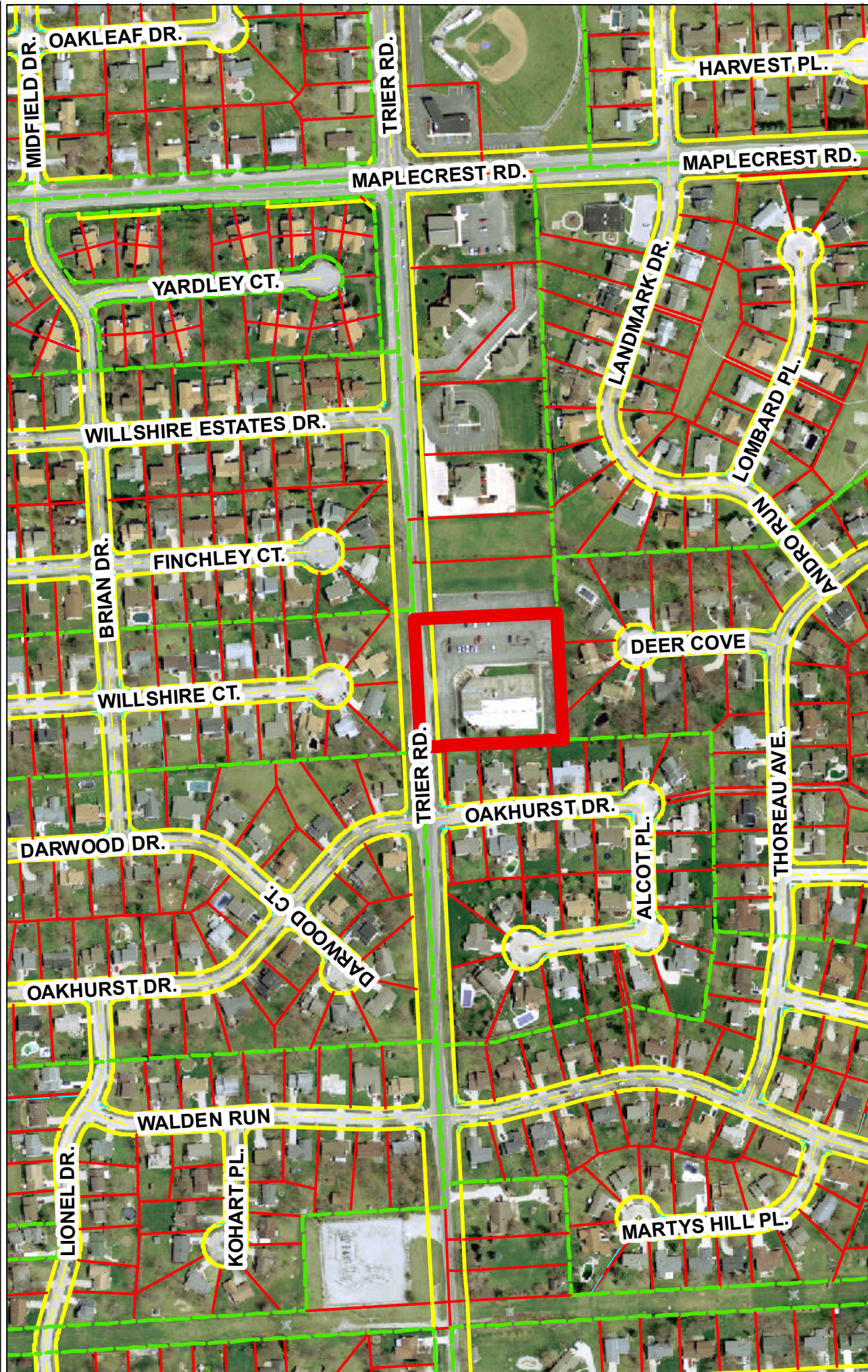
Scale: 1" = 60'

Date of field work: 12-10-98



I hereby certify that this survey was completed under my direct supervision and to the best of my knowledge and belief was executed according to the survey requirements set forth in 865 IAC 1-12.

SHT. #1 OF 2



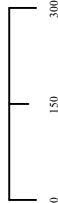
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

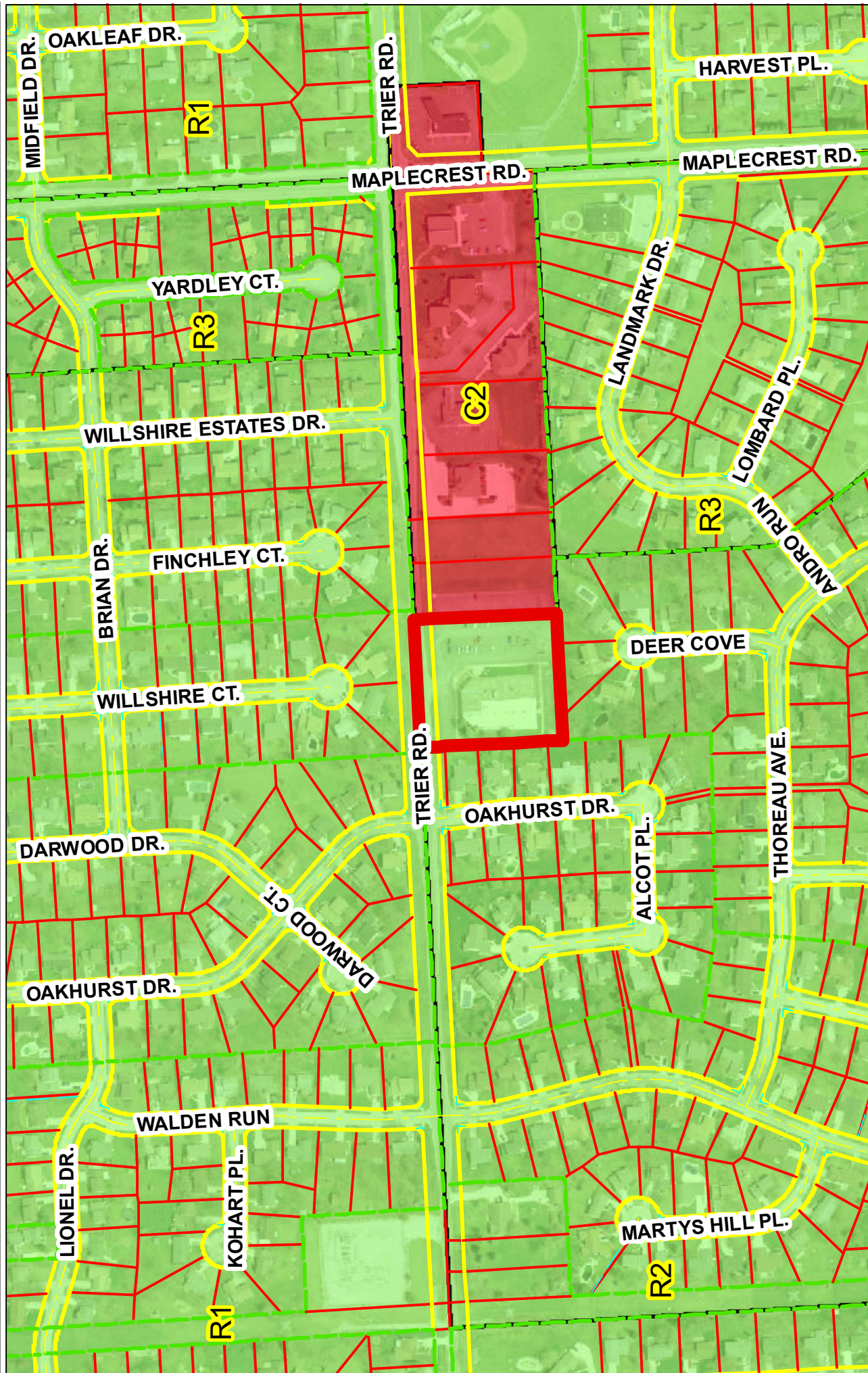
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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours, Spring 2009
Page 4 of 4

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1 inch = 300 feet





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