

1 **#REZ-2019-0017**

2 **BILL NO. Z-19-04-13**

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

5 **AN ORDINANCE amending the City of Fort Wayne**
6 **Zoning Map No. N-14 (Sec. 36 of Wayne Township)**

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

9 SECTION 1. That the area described as follows is hereby designated a C3 (General
10 Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
11 Wayne, Indiana:

12 Part of Lot 2 of Well's Pre-emption in Township 30 North, Range 12 East of the Second
13 Principal Meridian, in Allen County, Indiana and situated in the City of Fort Wayne,
14 described as follows: to-wit:

15 Beginning at the point of intersection of the North line of Tennessee Avenue and the East
16 line of Spy Run Avenue 156.2 feet to a point 69 feet South of the South line of an alley as in
17 the plat of L.M. Jones Addition recorded, and as subsequently widened by Declaratory
18 Resolution 639-1930 of the Board of Public Works of the City of Fort Wayne; thence East
19 parallel with said line 105 feet; thence South parallel with the East line of Spy Run Avenue
20 156.5 feet to the North line of Tennessee Avenue; thence West along said North line 105 feet
21 to the place of beginning, containing 16,401 square feet.

22 and the symbols of the City of Fort Wayne Zoning Map No. N-14 (Sec. 36 of Wayne
23 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
24 Wayne, Indiana is hereby changed accordingly.

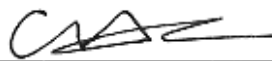
25 SECTION 2. If a written commitment is a condition of the Plan Commission's
26 recommendation for the adoption of the rezoning, or if a written commitment is modified and
27 approved by the Common Council as part of the zone map amendment, that written
28 commitment is hereby approved and is hereby incorporated by reference.

29 SECTION 3. That this Ordinance shall be in full force and effect from and after its
30

1 passage and approval by the Mayor.

2
3 _____
4 Council Member

5 APPROVED AS TO FORM AND LEGALITY:

6 
7 _____
8 Carol T. Helton, City Attorney

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant J & J Realty Co., LLP
Address 1800 Magnavox Way
City Fort Wayne State IN Zip 46804
Telephone 260-436-1415 E-mail lassust@lassus.com

Contact Person
Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
Address 4211 Clubview Drive
City Fort Wayne State IN Zip 46804
Telephone 260-602-8000 E-mail smf@smfklaw.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 1630 Spy Run, Ft. Wayne, IN 46805
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.38
Proposed density 1 units per acre
Township name Wayne Township section # 30
Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Fort Wayne Zoning Ordinance.
Sewer provider City of Fort Wayne Water provider City of Fort 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 Rezoning 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.

J & J Realty Co., LLP by Jon F. Lassus, Partner [Signature] 3/27/19
(printed name of applicant) (signature of applicant) (date)
J & J Realty Co., LLP by Jon F. Lassus, Partner [Signature] 3/27/19
(printed name of property owner) (signature of property owner) (date)

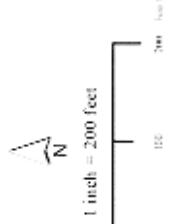
(printed name of property owner) (signature of property owner) (date)

(printed name of property owner) (signature of property owner) (date)

Received	Receipt No.	Hearing Date	Petition No.
4/1/19	129869	5/6/19	REZ-2019-0017



Although these accuracy standards have been employed in the creation of this map, the City does not warrant its accuracy. The accuracy of the information contained herein and the reliability of the map is not guaranteed. Any error or omission in this map is the responsibility of the user. North American Datum 1983. Scale: Plan Coordinate System, Indiana East. Photos and Cartography: Spring 2019. Date: 4/17/2019.



City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0017
Bill Number: Z-19-04-13
Council District: 5-Geoff Paddock

Introduction Date: April 23, 2019

Plan Commission
Public Hearing Date: May 6, 2019 (not heard by Council)

Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

Synopsis of Ordinance: To rezone approximately 0.38 acres of property from C2-Limited Commercial to C3-General Commercial.

Location: 1630 Spy Run Avenue

Reason for Request: To rezone the property of an existing Lassus gas station and convenience store to bring the gas station use into compliance with the current zoning ordinance.

Applicant: J & J Realty Co., LLP

Property Owner: J & J Realty Co., LLP

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3-General Commercial zoning district, along with a Written Commitment to prohibit other C3 uses. The rezoning will allow the existing use to conform to the ordinance.

Effect of Non-Passage: The property will remain zoned C2-Limited Commercial, which does not permit new gas stations. The existing investment is non-conforming, which affects how the property can be developed or expanded in the future.

FACT SHEET

Case #REZ-2019-0017 Bill # Z-19-04-13 Project Start: 23 April 2019

APPLICANT:	J & J Realty Co., LLP
REQUEST:	To rezone property from C2/Limited Commercial to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.
LOCATION:	The site is located at the northeast corner of Spy Run Avenue and Tennessee Avenue. The address of the subject property is 1630 Spy Run Avenue (Section 36 of Wayne Township).
LAND AREA:	Approximately 0.4 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial
COUNCIL DISTRICT:	5-Geoff Paddock
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

6 May 2019 Public Hearing

- One neighbor submitted support for the project.
- Don Schmidt, Tom Fricstroffer and Billy Davenport were absent.

13 May 2019 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

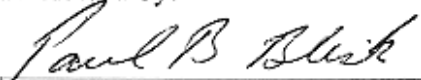
A motion was made by Justin Shirley and seconded by Don Schmidt to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

8-0 MOTION PASSED

- Billy Davenport was absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
23 May 2019

Reviewed by:


Paul B. Blisk
Deputy Land Use Director

PROJECT SUMMARY

- The site is fully developed with gas pumps/canopy and convenience store.
- It appears that a service station has been on the property since 1960.

The petitioner requests a rezoning from C2/Limited Commercial to C3/General Commercial to allow the existing use of the property to comply with the current zoning ordinance. The existing gas station and convenience are located at 1630 Spy Run Avenue, at the intersection with Tennessee Avenue. Until the Zoning Ordinance Amendment in 2014, a gas station was a permitted use in the C2 zoning district.

The petitioner seeks the allowance of the existing gas station, and the ability to maintain, expand and improve as allowed for a permitted use. Along with the rezoning request, the petitioner has submitted a voluntary Written Commitment governing uses on the property. If approved, all but four C3 /General Commercial uses will be **prohibited**. Those new C3 uses proposed to be **permitted** are:

- (1) Automobile car wash
- (2) Gas station
- (3) Propane/bottled gas sales and service as an accessory to a gas station or convenience store
- (4) Truck fueling station

The Comprehensive Plan encourages development that will not adversely affect the current conditions of an area or the character of the current structures in the area. This area of the Spy Run corridor has a mixture of residential, retail, service, and automobile related uses, such as: apartments, transitional housing, nursing home, car sales, car repair, tattoo establishment, service organizations, restaurant, HVAC repair, and professional offices. This proposal does not include any request to change or increase the intensity of the existing use. Staff is not opposed to bringing the existing use into compliance with the ordinance, with a Written Commitment.

The comprehensive plan supports this development through the following objectives:

LU1. Encourage carefully planned growth by utilizing the conceptual development map as part of the community's land use decision-making process;

LU3. Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;

LU8. Use land resources efficiently by encouraging compact development alternatives in infill areas where utilities and other infrastructure currently exist.

PUBLIC HEARING SUMMARY:

Presenter: Scott Federoff, representing Lassus, presented the proposal to the Plan Commission, as outlined above.

Public Comments in Support:

Shepherd's House, 519 Tennessee Avenue, gave support to the project through email.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition REZ-2019-0017

APPLICANT: J & J Realty Co., LLP
REQUEST: To rezone property from C2/Limited Commercial to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.
LOCATION: The site is located at the northeast corner of Spy Run Avenue and Tennessee Avenue. The address of the subject property is 1630 Spy Run Avenue (Section 36 of Wayne Township).
LAND AREA: Approximately 0.4 acres
PRESENT ZONING: C2/Limited Commercial
PROPOSED ZONING: C3/General Commercial
I _____

The Plan Commission recommends that Rezoning Petition REZ-2019-0017, with a Written Commitment, be returned to Council with a "Do Pass" recommendation after considering the following:

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 is a mixture of residential, office and commercial services. The purpose of the rezoning is to allow an existing use to comply with the zoning ordinance.
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 use on the property is existing and is not proposed to change. A proposed Written Commitment prohibiting all but existing C3 uses will protect surrounding property owners from new intensive or incompatible uses.
3. Approval is consistent with the preservation of property values in the area. This proposal does not increase the intensity of the existing use, and allows for the property to be maintained, expanded and/or improved, allowing for investment when desired or necessary.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area.

These findings approved by the Fort Wayne Plan Commission on May 13, 2019.


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

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant J & J Realty Co., LLP
Address 1800 Magnavox Way
City Fort Wayne State IN Zip 46804
Telephone 260-436-1415 E-mail lassust@lassus.com

Contact Person
Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
Address 4211 Clubview Drive
City Fort Wayne State IN Zip 46804
Telephone 260-602-8000 E-mail smf@smfklaw.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 1630 Spy Run, Ft. Wayne, IN 46805
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.38
Proposed density 1 units per acre
Township name Wayne Township section # 30
Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Fort Wayne Zoning Ordinance.
Sewer provider City of Fort Wayne Water provider City of Fort 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 Rezoning 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.

J & J Realty Co., LLP by Jon F. Lassus, Partner Jon F. Lassus 3/27/19
(printed name of applicant) (signature of applicant) (date)
J & J Realty Co., LLP by Jon F. Lassus, Partner Jon F. Lassus 3/27/19
(printed name of property owner) (signature of property owner) (date)
(printed name of property owner) (signature of property owner) (date)
(printed name of property owner) (signature of property owner) (date)

Received	Receipt No.	Hearing Date	Petition No.
4/1/19	129869	5/6/19	REZ-2019-0017



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

any other or variation in this way

State Plane Coordinate System, Indiana East

Plane Coordinate System, Volume I
 Photo and Contours, Scale 1:250,000

and Co. Inc.



1 inch = 200 feet

507

507

507

507



Although direct accuracy started to drop
soon employed in the core platform of this tool.

4 Heard of Commissioners of the County of Allen
North American Datum 1983

State Plane Coordinate System, 1983 Edition
Photos and Context: Spring 2009

1979-4,7,2,20,9

1 inch = 200 feet



WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the ___ day of ___, 2019, by J & J Realty Co., LLP, an Indiana limited liability partnership ("Company").

RECITALS

A. By virtue of that certain Limited Warranty Deed dated February 9, 1971 and recorded on February 22, 2019 as Document Number 71-02643 in the Office of the Recorder of Allen County, Indiana, Company is the owner of record in fee simple of certain real estate located in Allen County, Indiana, which is legally described in the addendum attached to this Commitment as Exhibit "A" (the "Real Estate").

B. Company filed an application under Case Number REZ-2019-000___ (the "Rezoning Application") to change the zoning map applicable to the Real Estate from the C2 Zoning District to the C3 Zoning District.

D. Pursuant to Ind. Code § 36-7-4-1015(a)(1) and the City of Fort Wayne Zoning Ordinance (the "Ordinance"), the Fort Wayne Plan Commission (the "Plan Commission") may require an owner of real property to make a written commitment concerning the use or development of the real property as part of rezoning application (the "Approval").

E. In connection with the Rezoning Application, Company offered to make, and the Plan Commission required Company to make, a written commitment concerning the use and development of the Real Estate.

COMMITMENT

In consideration of the Approval, Company makes the following written commitments pursuant to I.C. §36-7-4-1015(a)(1):

1. **PERMITTED/PROHIBITED USES.** All uses normally permitted in the C3/General Commercial zoning district under §157.216 of the Ordinance that are not permitted uses in the C2/Limited Commercial under §157.213 of the Ordinance (all of which shall remain permitted) shall be prohibited except for the following (which shall be permitted):

- a) Automobile car wash;
- b) Gas station;
- c) Propane/bottled gas sales and service as an accessory use to a gas station or convenience store; and
- d) Truck fueling station.

2. **ENFORCEMENT RIGHTS.** The 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.

3. **EFFECTIVE DATE.** This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

4. **SUCCESSORS AND ASSIGNS.** This Commitment and the restrictions set forth above shall inure to the benefit of: (a) all persons who own property comprising the Real Estate, and their successors and assigns; and (b) the Zoning Administrator and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate.

5. **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.

6. **GOVERNING LAW.** This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

7. **STATUTORY AUTHORITY.** This Commitment is made pursuant to I.C. §36-7-4-1015(a)(1).

8. **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.

9. ***MODIFICATION AND TERMINATION.*** Modification and termination of this Commitment may only be made in accordance I.C. §36-7-4-1015, as such statute may be amended from time-to-time.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE FOLLOWS.]

J & J Realty Co., LLP
an Indiana limited liability partnership

By: _____
Jon F. Lassus, Partner

"Company"

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this _____ day of _____, 2019, personally appeared Jon F. Lassus, as a Partner of J & J Realty Co., LLP, an Indiana limited liability partnership, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:
June 28, 2028

Scott M. Federoff, Notary Public
Resident of Allen, County, Indiana

This instrument prepared by and after recording return to: Scott M. Federoff, SNYDER MORGAN FEDEROFF & KUCHIMAY LLP, 4211 Clubview Drive, Fort Wayne, Indiana 46804.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Scott M. Federoff

Exhibit "A"
Legal Description of the Real Estate

PART OF LOT two (2) of Well's Pre-emption in Township 30 North, Range 12 East of the second Principal Meridian, in Allen County, Indiana, and situated in the City of Ct. Wayne, described as follows, to wit:

BEGINNING AT THE INTERSECTION of the North line of Tennessee Avenue and the East line of Spy Run Avenue; running thence North along the East line of Spy Run Avenue one hundred fifty-six and two tenths (156.2) feet to a point sixty-nine (69) feet South of the South line of an alley as in the plat of L. M. Jones Addition recorded, as subsequently widened by Declaratory Resolution 639-1930 of the Board of Public Works of the City of Ft. Wayne; thence East parallel with said line one hundred five (105) feet; thence South parallel with the East line of Spy Run Avenue one hundred fifty-six and five tenths (156.5) feet to the North line of Tennessee Avenue; thence West along the North line one hundred five (105) feet to the place of beginning, containing 16,401 square feet.