

#REZ-2019-0051

BILL NO. Z-19-07-07

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. J-15 (Sec. 22 of Wayne Township)**

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

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

PARCEL I:

PART OF LOT NUMBER I IN RICHARDVILLE RESERVE, WEST OF THE ST. MARY'S RIVER, FORT
WAYNE, ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF WINCHESTER ROAD WITH
THE SOUTHEASTERLY LINE OF SAID LOT NUMBER I, INTERSECTION ALSO SHOWN ON THE
PLAT OF SCOTSWOOD ADDITION (PLAT RECORD 21, PAGES
99-100); THENCE NORTH 49 DEGREES 04 MINUTES 12 SECONDS WEST (RECORDED NORTH
49 DEGREES 06 MINUTES WEST), ALONG THE CENTERLINE OF WINCHESTER ROAD, A
DISTANCE OF 666.6 FEET; THENCE SOUTH 79 DEGREES 30 MINUTES WEST (RECORDED
SOUTH 79 DEGREES 27 MINUTES WEST), A DISTANCE OF 31.90 FEET TO A "FANSLER" #5
REBAR ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE WINCHESTER ROAD, ALSO
BEING THE NORTHEAST CORNER OF THE AGLER PROPERTY, AS RECORDED IN DOCUMENT
NUMBER 95-2788; THENCE CONTINUING
SOUTH 79 DEGREES 30 MINUTES WEST (RECORDED SOUTH 79 DEGREES 27 MINUTES
WEST), A DISTANCE OF 493.90 FEET (RECORDED 494.5 FEET) TO A "FANSLER" #5 REBAR ON
THE EASTERLY RIGHT-OF-WAY LINE OF BLUFFTON ROAD (STATE ROADS I & 3); THENCE
NORTH 10 DEGREES 40 MINUTES WEST, ON SAID EASTERLY RIGHT- OF-WAY LINE, A
DISTANCE OF 212.70 FEET TO A "FANSLER" #5 REBAR AT THE POINT OF BEGINNING;
THENCE CONTINUING NORTH 10 DEGREES 40 MINUTES WEST, ON SAID EASTERLY RIGHT-
OF-WAY LINE, 170.00 FEET TO A 1-1/4 INCH PIPE ON THE SOUTHERLY LINE OF A 1 ACRE
PARCEL DESCRIBED IN DOCUMENT NUMBER 202024141; THENCE NORTH 79 DEGREES 20
MINUTES EAST, ON SAID SOUTHERLY LINE, A DISTANCE OF 189.40 FEET TO A "FANSLER" #5
REBAR ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF WINCHESTER ROAD; THENCE
SOUTH 49 DEGREES 04 MINUTES 12 SECONDS EAST, ON SAID RIGHT-OF-WAY LINE A
DISTANCE OF 216.93 FEET TO A "FANSLER" #5 REBAR; THENCE SOUTH 79 DEGREES 20
MINUTES WEST, PARALLEL WITH THE SOUTHERLY LINE OF SAID 1 ACRE PARCEL DESCRIBED

IN DOCUMENT NUMBER 202024141, A DISTANCE OF 324.16 FEET TO THE POINT OF BEGINNING, CONTAINING 1.00 ACRE, MORE OR LESS.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS, FOR THE BENEFIT OF PARCEL I AS CREATED BY GRANT OF PRIVATE ACCESS EASEMENT AND AGREEMENT DATED JANUARY 28, 2003 AND RECORDED JANUARY 30, 2003 AS DOCUMENT NUMBER 203010659 OVER AND ACROSS THE FOLLOWING DESCRIBED REAL ESTATE IN ALLEN COUNTY, INDIANA:

PART OF LOT NUMBER I IN RICHARDVILLE RESERVE, WEST OF THE ST. MARY'S RIVER, FORT WAYNE, ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF WINCHESTER ROAD WITH THE SOUTHEASTERLY LINE OF SAID LOT NUMBER 1, INTERSECTION ALSO SHOWN ON THE PLAT OF SCOTSWOOD ADDITION (PLAT RECORD 21, PAGES 99-100); THENCE NORTH 49 DEGREES 04 MINUTES 12 SECONDS WEST (RECORDED NORTH 49 DEGREES 06 MINUTES WEST), ALONG THE CENTERLINE OF WINCHESTER ROAD, A DISTANCE OF 666.6 FEET; THENCE SOUTH 79 DEGREES 30 MINUTES WEST (RECORDED SOUTH 79 DEGREES 27 MINUTES WEST), A DISTANCE OF 31.90 FEET TO A "FANSLER" #5 REBAR ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE WINCHESTER ROAD, ALSO BEING THE NORTHEAST CORNER OF THE AGLER PROPERTY, AS RECORDED IN DOCUMENT NUMBER 95-2788; THENCE CONTINUING SOUTH 79 DEGREES 30 MINUTES WEST (RECORDED SOUTH 79 DEGREES 27 MINUTES WEST), A DISTANCE OF 493.90 FEET (RECORDED 494.5 FEET) TO A "FANSLER" #5 REBAR ON THE EASTERLY RIGHT-OF-WAY LINE OF BLUFFTON ROAD (STATE ROADS 1 & 3); THENCE NORTH 10 DEGREES 40 MINUTES WEST, ON SAID EASTERLY RIGHT- OF-WAY LINE, A DISTANCE OF 212.70 FEET TO A "FANSLER" #5 REBAR AT THE POINT OF BEGINNING; THENCE NORTH 79 DEGREES 20 MINUTES EAST, PARALLEL WITH THE SOUTHERLY LINE OF A 1 ACRE PARCEL DESCRIBED IN DOCUMENT NUMBER 202024141, A DISTANCE OF 40.0 FEET; THENCE SOUTH 10 DEGREES 40 MINUTES 00 SECONDS EAST, PARALLEL WITH SAID EASTERLY RIGHT-OF-WAY LINE OF BLUFFTON ROAD, 12.00 FEET; THENCE SOUTH 79 DEGREES 20 MINUTES WEST, PARALLEL WITH THE SOUTHERLY LINE OF SAID 1 ACRE PARCEL, DESCRIBED IN DOCUMENT NUMBER 202024141, A DISTANCE OF 40.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF BLUFFTON ROAD; THENCE NORTH 10 DEGREES 40 MINUTES 00 SECONDS WEST, ON SAID EASTERLY RIGHT-OF-WAY LINE, 12.00 FEET TO THE POINT OF BEGINNING, CONTAINING 480 SQUARE FEET, MORE OR LESS.

and the symbols of the City of Fort Wayne Zoning Map No. J-15 (Sec. 22 Wayne Township), as established by Section 157.082 of Title XV of the Code of the City of Fort Wayne, Indiana is hereby changed accordingly.

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
8 _____
Council Member

9 APPROVED AS TO FORM AND LEGALITY:

10
11 
12 _____
Carol T. Helton, City Attorney

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Virk Brothers, LLC
Address 13015 Garnett Hill
City Fort Wayne State IN Zip 46845
Telephone _____ E-mail _____

Contact Person
Contact Person Joshua C. Neal, Attorney
Address 215 East Berry Street
City Fort Wayne State IN Zip 46802
Telephone (260) 423-9551 E-mail jcn@barrettllaw.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 4935 Bluffton Road
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.03 acres
Proposed density _____ units per acre
Township name Wayne Township section # 22
Purpose of rezoning (attach additional page if necessary) To bring the subject real estate into compliance 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.

See attached Exhibit A
(printed name of applicant) _____ (signature of applicant) _____ (date) _____
See attached Exhibit A
(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.
<u>July 2-19</u>	<u>131077</u>	<u>8-12-19</u>	<u>REZ-2019-0051</u>

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0051
Bill Number: Z-19-07-07
Council District: 4-Jason Arp

Introduction Date: July 23, 2019

Plan Commission
Public Hearing Date: August 12, 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 1.03 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses.

Location: 4935 Bluffton Road

Reason for Request: To bring the existing use as a gas station and convenience store into compliance with the zoning ordinance.

Applicant: Virk Brothers, LLC

Property Owner: Virk Brothers, LLC

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.

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

Virk Brothers, LLC

By: _____

Name: _____

Its: _____

"PROPERTY OWNER"

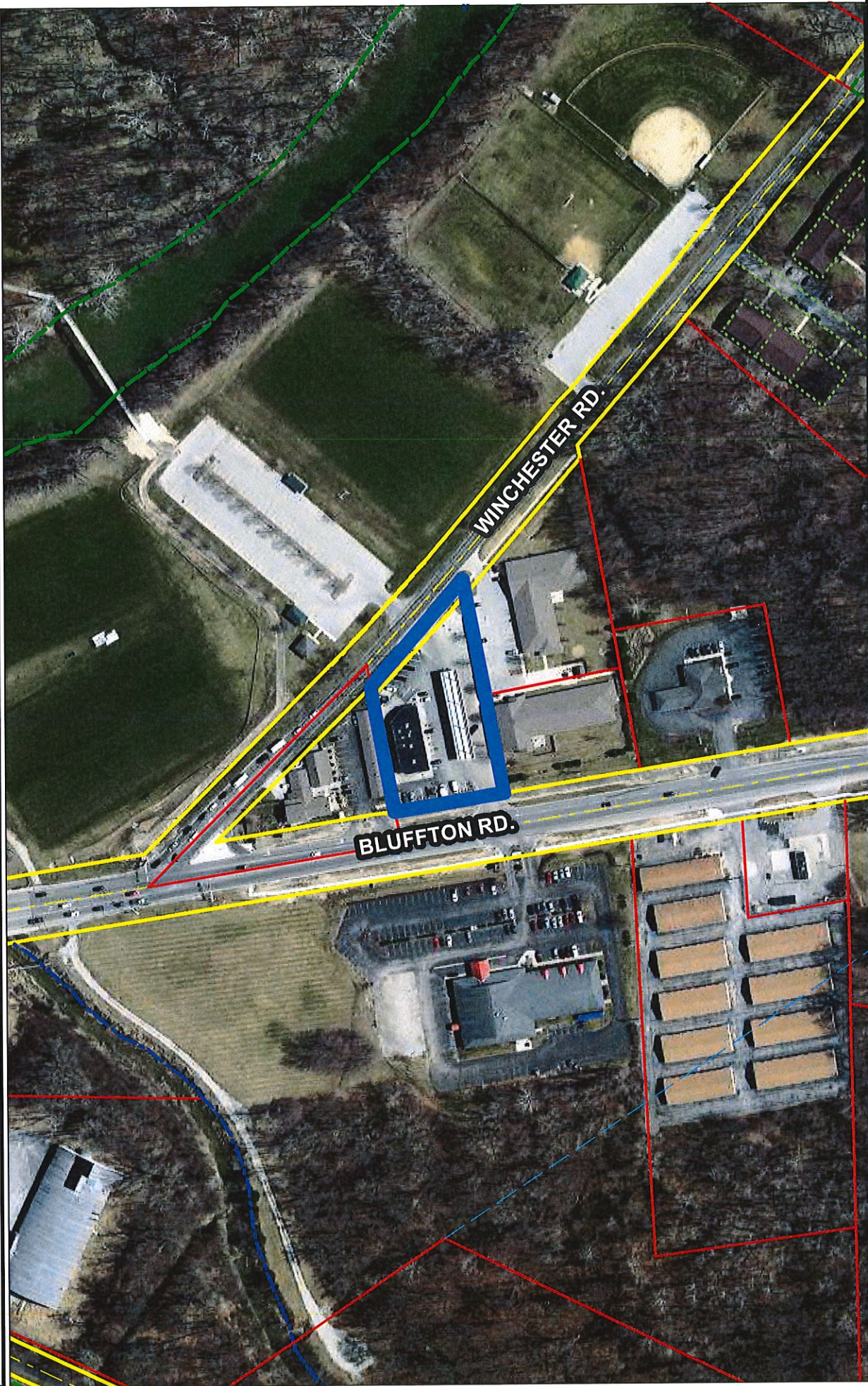
Virk Brothers, LLC

By: _____

Name: _____

Its: _____

Rezoning Petition REZ-2019-0051 - 4935 Bluffton Road



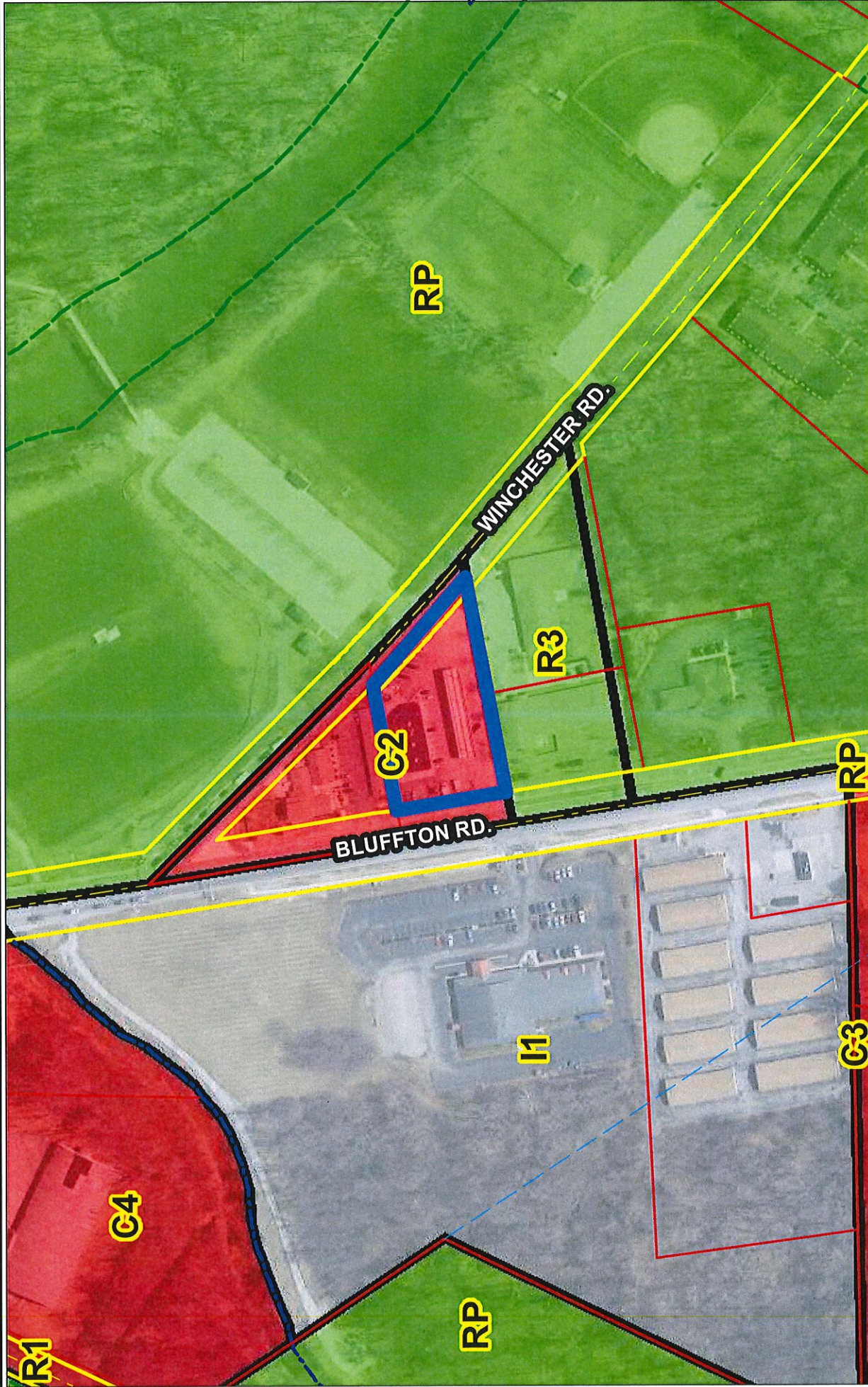
1 inch = 200 feet



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
 Photo of Google Earth, Spring 2009
 Date: 7/9/2019

Rezoning Petition REZ-2019-0051 - 4935 Bluffton Road



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©2004 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2009
 Date: 7/9/2019

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made as of this ____ day of June, 2019, by Virk Brothers, LLC (herein the, "Declarant"), under the following circumstances:

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of record in fee simple of certain real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (herein, the "Real Estate"); and

WHEREAS, Declarant has submitted a Zoning Map Amendment Application with the City of Fort Wayne Plan Commission ("Plan Commission"), bearing number REZ-2019-____ (the "Zoning Application") with respect to the Real Estate; and

WHEREAS, pursuant to the Zoning Application, Declarant has requested the Real Estate be rezoned to C-3 pursuant to the City of Fort Wayne Zoning Ordinance (the "Ordinance"); and

WHEREAS, Declarant, in conjunction with the Zoning Application, has submitted this written commitment to the Plan Commission, 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

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.** All uses that are permitted as a matter of right in the C-3 (General Commercial) zoning district pursuant to Section 157.216 of the Ordinance that are not also permitted as a matter of right in the C-2 (Limited Commercial) zoning district pursuant to Section 157.213 of the Ordinance shall be prohibited, except for the following:

- 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.

Notwithstanding anything contained herein to the contrary, and for purposes of the avoidance of doubt, all uses that are permitted as a matter of right in the C-2 (Limited Commercial) zoning district pursuant to Section 157.213 of the Ordinance shall continue to be permitted uses on the Real Estate.

2. 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.

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.

8. Amendment or Termination. Modification or amendment of this Commitment may only be made in accordance with I.C. § 36-7-4-1015, as such statute may be amended from time to time.

9. 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.

10. 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.

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

DRAFT

"DECLARANT"

Virk Brothers, LLC

By: _____

Printed Name: _____

Its: _____

STATE OF INDIANA

)

) SS: _____

COUNTY OF ALLEN

)

Before me, the undersigned, a Notary Public, in and for said County and State, this ____ day of _____, 2019, personally appeared _____, the _____ of Virk Brothers, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing.

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

_____, Notary Public

My Commission Expires: _____

My County of Residence: Allen

THIS INSTRUMENT prepared by Joshua C. Neal, Esq., Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

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. Joshua C. Neal

When recorded, return to: Joshua C. Neal, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.