

#REZ-2019-0049

BILL NO. Z-19-07-06

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. K-38 (Sec. 15 of Washington 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:

Part of the Northwest Quarter of Section 24, Township 30 North, Range 11 East, Allen
County, Indiana,
described as follows:

PARCEL I:

PARTS OF LOTS NUMBERED 2 AND 3 IN KAHN'S ADDITION, ACCORDING TO THE PLAT THEREOF,
RECORDED IN PLAT BOOK 16, PAGE 186 IN THE OFFICE OF THE RECORDER, ALLEN COUNTY, INDIANA,
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT: BEGINNING ON THE EAST LINE OF
LOT NUMBER 3 IN SAID KAHN'S ADDITION AT A POINT SITUATED 160.0 FEET SOUTH 02 DEGREES 28
MINUTES 53 SECONDS EAST (DEED BEARING AND IS USED AS THE BASIS FOR THE BEARINGS IN THIS
DESCRIPTION) FROM THE NORTHEAST CORNER THEREOF; THENCE SOUTH 02 DEGREES 28 MINUTES
53 SECONDS EAST, ON AND ALONG THE EAST LINE OF SAID LOT NUMBER 3, A DISTANCE OF 452.35
FEET TO THE POINT OF INTERSECTION OF SAID EAST LINE WITH THE NORTH RIGHT-OF-WAY LINE OF
WASHINGTON CENTER ROAD AS DEDICATED IN DOCUMENT NUMBER 93-53454 IN THE OFFICE OF
SAID RECORDER; THENCE SOUTH 89 DEGREES 15 MINUTES 55 SECONDS WEST, ON AND ALONG SAID
NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 180.00 FEET TO THE POINT OF INTERSECTION OF SAID
NORTH RIGHT-OF-WAY LINE WITH THE EAST LINE OF LOT NUMBER 2 IN SAID KAHN'S ADDITION;
THENCE NORTH 02 DEGREES 29 MINUTES 00 SECOND WEST, ON AND ALONG SAID EAST LINE, A
DISTANCE OF 184.99 FEET; THENCE SOUTH 89 DEGREES 15 MINUTES 55 SECONDS WEST AND
PARALLEL TO THE SOUTH LINE OF SAID LOT NUMBER 2, A DISTANCE OF 180.00 FEET TO A POINT ON
THE WEST LINE OF SAID LOT NUMBER 2; THENCE NORTH 02 DEGREES 29 MINUTES 15 SECONDS
WEST, ON AND ALONG SAID WEST LINE, A DISTANCE OF 283.61 FEET TO THE POINT OF
INTERSECTION OF SAID WEST LINE WITH THE SOUTH LINE OF AN ACCESS EASEMENT DEDICATED IN
DOCUMENT NUMBER 93-45088 (SOUTH RING ROAD); THENCE NORTHEASTERLY, ON AND ALONG
SAID SOUTH LINE, AS DEFINED BY THE ARC OF A REGULAR CURVE TO THE LEFT, NOT TANGENT TO
THE LAST COURSE, HAVING A RADIUS OF 389.43 FEET, AN ARC DISTANCE OF 281.64 FEET, BEING
SUBTENDED BY A LONG CHORD HAVING A LENGTH OF 275.54 FEET AND A BEARING OF NORTH 68
DEGREES 08 MINUTES 00 SECONDS EAST; THENCE SOUTH 42 DEGREES 35 MINUTES 05 SECONDS
EAST, A DISTANCE OF 155.15 FEET TO THE POINT OF BEGINNING, CONTAINING 3.392 ACRES OF
LAND.

EXCEPT THAT PART CONVEYED TO THE COUNTY OF ALLEN, STATE OF INDIANA BY A DEED RECORDED AUGUST 15, 1995 AS DOCUMENT NO. 95-35894 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, TO-WIT: A STRIP OF LAND BEING 10 FEET IN WIDTH OFF THE ENTIRE SOUTHERN SIDE OF THE FOLLOWING DESCRIBED TRACT: PARTS OF LOTS NUMBERED 2 AND 3 IN KAHN'S ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 16, PAGE 186 IN THE OFFICE OF THE ALIEN COUNTY RECORDER, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO- WIT: BEGINNING ON THE EAST LINE OF LOT NUMBER 3 IN SAID KAHN'S ADDITION AT A POINT SITUATED 160.0 FEET SOUTH 02 DEGREES 28 MINUTES 53 SECONDS EAST (DEED BEARING AND AS THE BASIS FOR THE BEARINGS IN THIS DESCRIPTION) FROM THE NORTHEAST CORNER THEREOF; THENCE SOUTH 02 DEGREES 28 MINUTES 53 SECONDS EAST ON AND ALONG THE EAST LINE OF SAID LOT NUMBER 3 A DISTANCE OF 452.35 FEET TO THE POINT OF INTERSECTION OF SAID EAST LINE WITH THE NORTH RIGHT-OF-WAY LINE OF WASHINGTON CENTER ROAD AS DEDICATED IN DOCUMENT NUMBER 93-53454 IN THE OFFICE OF SAID RECORDER; THENCE SOUTH 89 DEGREES 15 MINUTES 55 SECONDS WEST ON AND ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 180.0 FEET TO THE POINT OF INTERSECTION OF SAID NORTH RIGHT-OF-WAY LINE WITH THE EAST LINE OF LOT NUMBER 2 IN SAID KAHN'S ADDITION; THENCE NORTH 02 DEGREES 29 MINUTES 00 SECOND WEST ON AND ALONG SAID EAST LINE A DISTANCE OF 184.99 FEET; THENCE SOUTH 89 DEGREES 15 MINUTES 55 SECONDS WEST AND PARALLEL TO THE SOUTH LINE OF SAID LOT NUMBER 2 A DISTANCE OF 180.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT NUMBER 2; THENCE NORTH 02 DEGREES 28 MINUTES 15 SECONDS WEST ON AND ALONG SAID WEST LINE A DISTANCE OF 283.61 FEET TO THE POINT OF INTERSECTION OF SAID WEST LINE WITH THE SOUTH LINE OF AN ACCESS EASEMENT DEDICATED IN DOCUMENT NUMBER 93-45088 (SOUTH RING ROAD); THENCE NORTHEASTERLY ON AND ALONG SAID SOUTH LINE AS DEFINED BY THE ARC OF A REGULAR CURVE TO THE LEFT, NOT TANGENT TO THE LAST COURSE, HAVING A RADIUS OF 389.43 FEET, AN ARC DISTANCE OF 281.64 FEET, BEING SUBTENDED BY A LONG CHORD HAVING A LENGTH OF 275.54 FEET AND BEARING OF NORTH 68 DEGREES 08 MINUTES 00 SECOND EAST; THENCE SOUTH 42 DEGREES 35 MINUTES 05 SECONDS EAST A DISTANCE OF 155.15 FEET TO THE POINT OF BEGINNING, CONTAINING 3.392 ACRES OF LAND, CONTAINING IN SAID DEDICATION, 1800 SQUARE FEET, MORE OR LESS.

and the symbols of the City of Fort Wayne Zoning Map No. K-38 (Sec. 15 Washington 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 recommendation for the adoption of the rezoning, or if a written commitment is modified and approved by the Common Council as part of the zone map amendment, that written commitment is hereby approved and is hereby incorporated by reference.

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

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Council Member

APPROVED AS TO FORM AND LEGALITY:



Carol T. Helton, City Attorney

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0049
Bill Number: Z-19-07-06
Council District: 3-Tim Didier

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 3.4 acres from C2/Limited Commercial to
C3/General Commercial.

Location: 1820 West Washington Center Road

Reason for Request: To use existing building as an automobile body shop.

Applicant: D3, LLC

Property Owner: Caream Kamide

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3/General Commercial district, which
will allow the existing building, the former off-track betting facility, as an
auto body shop.

Effect of Non-Passage: The property will remain zoned for limited commercial and retail uses.

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant D3, LLC (affiliated entity of Oldacre McDonald, LLC)
Address 3841 Green Hills Village Drive, Suite 400
City Nashville State Tennessee Zip 37215
Telephone 615-269-5444 E-mail dbailey@oldacremcdonald.com

Contact Person
Contact Person Mark H. Bains
Address 215 E. Berry Street
City Fort Wayne State Indiana Zip 46802
Telephone 260-423-8902 E-mail mhb@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 1820 West Washington Center
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 3.392 acres
Proposed density N/A units per acre
Township name Washington Township Township section #
Purpose of rezoning (attach additional page if necessary) To allow the property to be used as an automobile body shop

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 Exhibit A
(printed name of applicant) (signature of applicant) (date)

See 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.
7-2-2019	131070	8-12-2019	REZ-2019-0049

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

D3, LLC, an Alabama limited liability company

By: 

Name: Tim Dearman

Its: President

"PROPERTY OWNER"

Caream Kamide

Signature: _____

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

D3, LLC, an Alabama limited liability company

By: _____

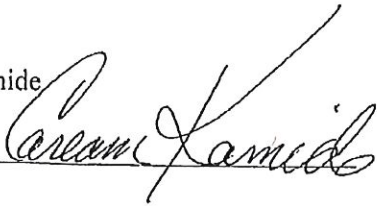
Name: _____

Its: _____

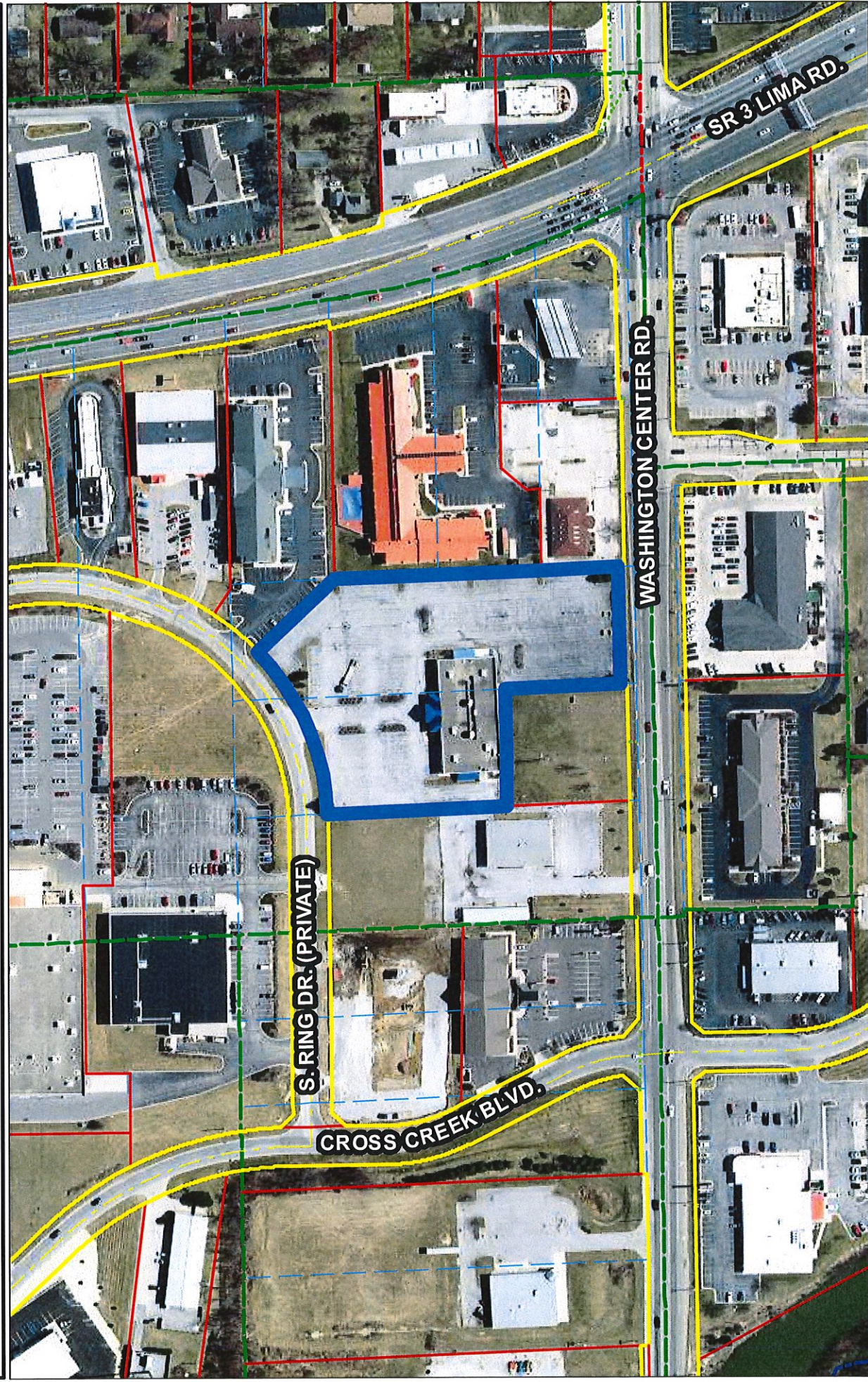
"PROPERTY OWNER"

Caream Kamide

Signature: _____

A handwritten signature in cursive script, reading "Caream Kamide", written over a horizontal line.

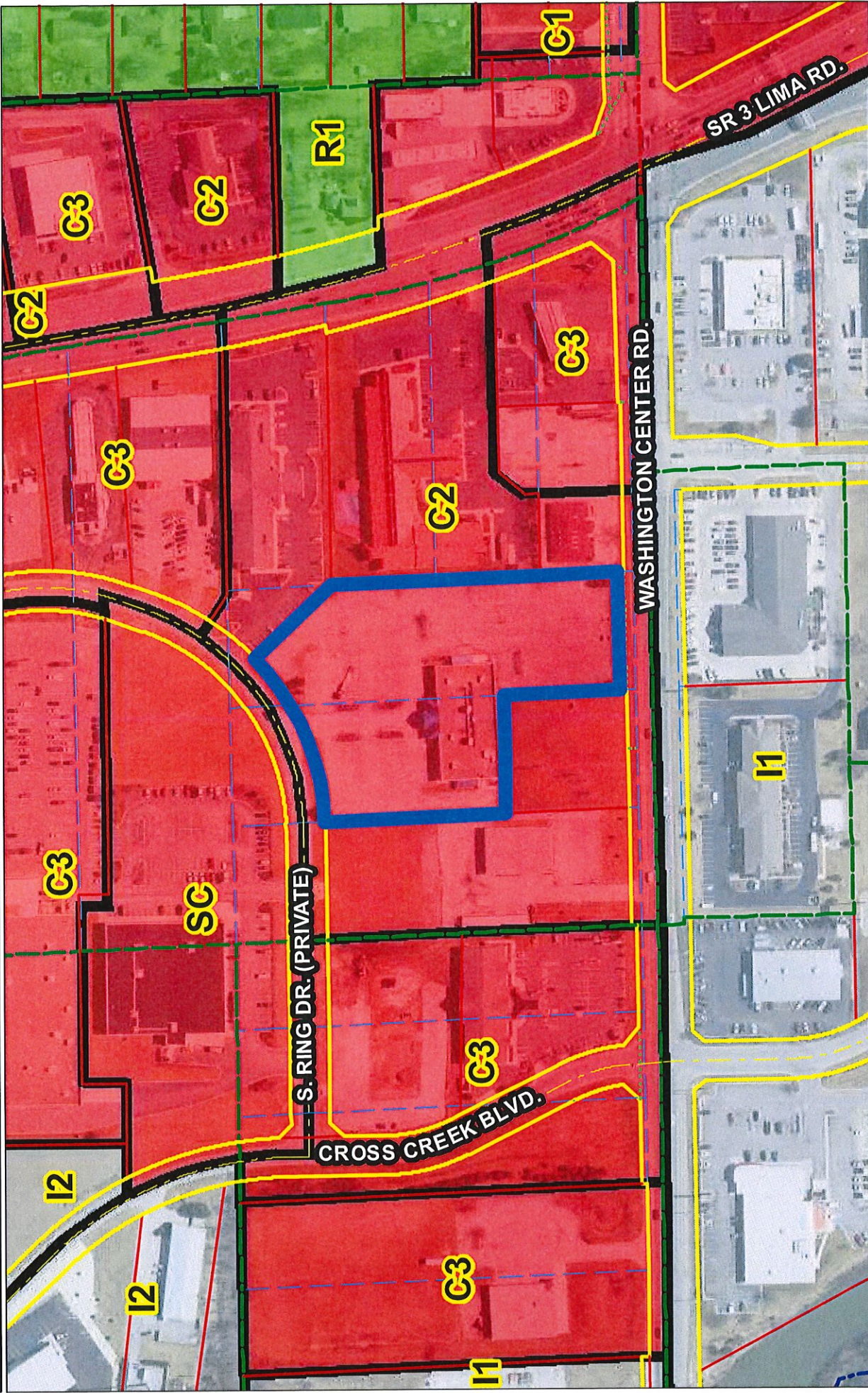
Rezoning Petition REZ-2019-0049 - 1820 West Washington Center Rd



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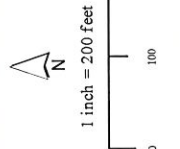
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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 7/9/2019

Rezoning Petition REZ-2019-0049 - 1820 West Washington Center Rd

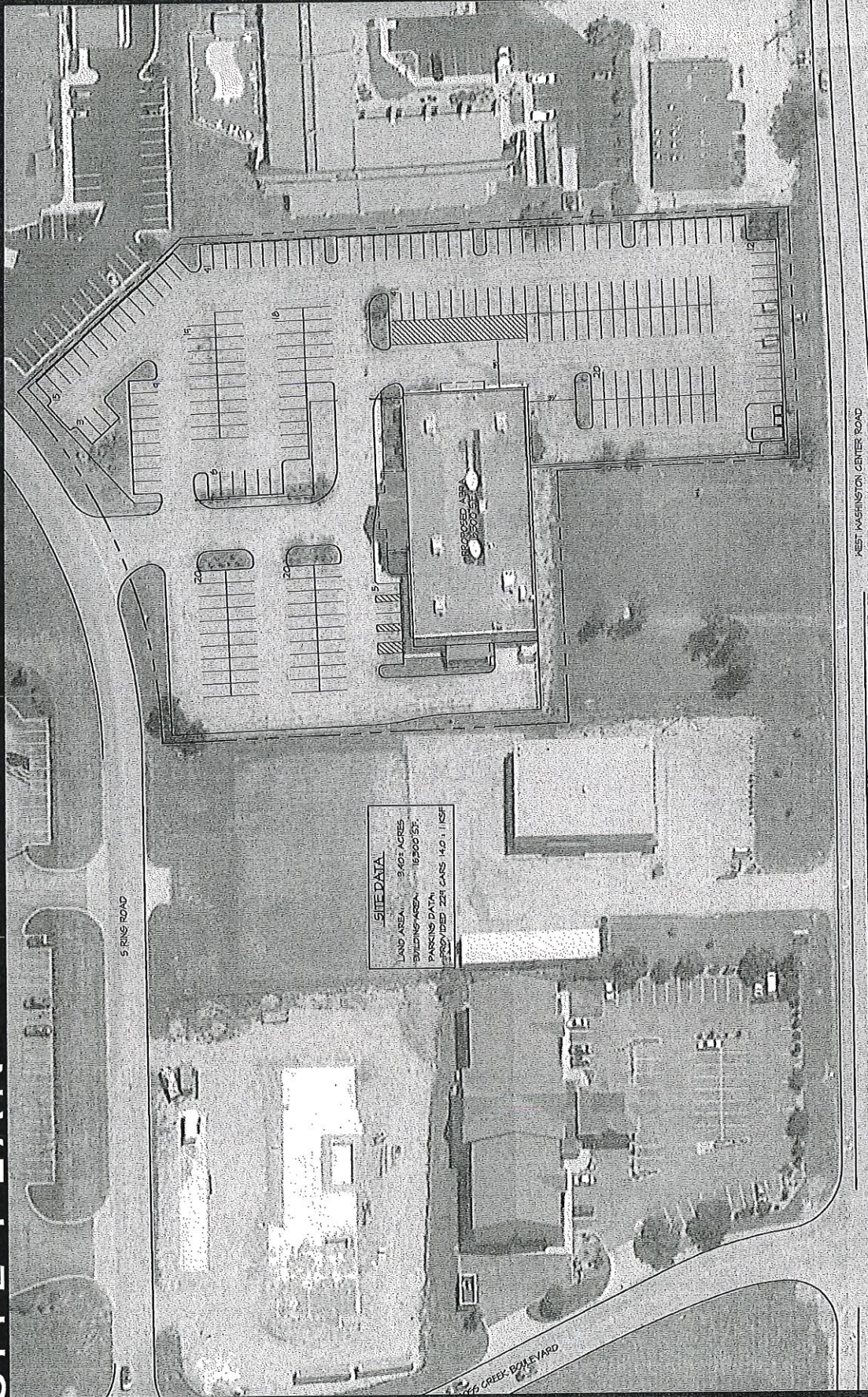


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SITE PLAN



SITE DATA
 LAND AREA 9.01 ACRES
 BUILDING AREA 15,000 SF
 PARKING DATA
 PROVIDED 224 CARS 140 11 KSF

SITE PLAN

DRAWING 1820 West Washington Center Road.dwg

DATE 01-30-19
 DRAWN BY S. Boeckert
 SCALE 1" = 100'



oldacre
mcdonald

3081 DICK HALL BLVD. SUITE 100
 FORT WAYNE, IN 46804
 PHONE (219) 285-5444 FAX (219) 335-1882

1820 WEST WASHINGTON CENTER ROAD
 FORT WAYNE, INDIANA

FACT SHEET

Case #REZ-2019-0049

Bill # Z-19-07-06

Project Start: 23 July 2019

APPLICANT:	D3, LLC
REQUEST:	To rezone property from C2/Limited Commercial to C3/General Commercial to permit an automobile body shop in the existing structure.
LOCATION:	The address of the subject property is 1820 West Washington Center Road (Section 15 of Washington Township).
LAND AREA:	Approximately 3.4 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial
COUNCIL DISTRICT:	3-Tom Didier
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

12 August 2019 Public Hearing

- No one from the public spoke at the hearing.
- Billy Davenport, Tom Freistroffer, Rachel Tobin-Smith, and Judi Wire were absent.

19 August 2019 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

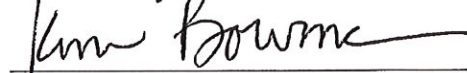
A motion was made by Justin Shurley and seconded by Billy Davenport to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

6-0 MOTION PASSED

- Connie Haas Zuber, Tom Freistroffer and Paul Sauerteig were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
August 27, 2019

Reviewed by:



Kimberly R. Bowman, AICP
Executive Director

PROJECT SUMMARY

The petitioner requests a rezoning from C2/Limited Commercial to C3/General Commercial to allow the re-use of the existing building as an automobile body shop. The existing building will be retrofitted within the existing footprint to be utilized for the new use. In the early 1990's the Cross Creek shopping center was rezoned and developed at the northwest corner of Lima Road and West Washington Center Road. This property was included as part of that rezoning and primary development plan. The existing structure was built in 1994 and operated as an off-track betting facility until a few years ago. The properties to the east include a Salvation Army store, a hotel and a vacant restaurant. The property to the west appears to be a wholesale flooring store. The property to the north is developed with a Home Depot and Gander Mountain. The property to the south is a multi-tenant retail building. There is C3/General Commercial zoning just to the west at the entrance to Cross Creek, to the north at Home Depot and also to the east at Lima Road. There is industrial zoning along Cross Creek Boulevard up to Ludwig Road, and on the south side Washington Center Road.

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. The proposed automobile body shop facility would be a compatible land use to other uses in the area. Cross Creek has a mixture of land uses from light industrial to auto sales, so this proposal would not negatively impact the existing character of the area.

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: Mark Bains, Barrett McNagny, presented the proposal to the Plan Commission, as outlined above. A voluntary Written Commitment was submitted to address uses, outdoor storage and noise.

Public Comments:

- none

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

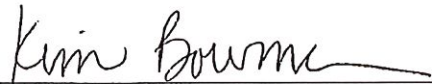
Rezoning Petition REZ-2019-0049

APPLICANT:	D3, LLC
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LOCATION:	The address of the subject property is 1820 West Washington Center Road (Section 15 of Washington Township).
LAND AREA:	Approximately 3.4 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial

The Plan Commission recommends that Rezoning Petition REZ-2019-0049, 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 existing building was developed in 1994 and has been vacant for several years. The rezoning will allow for a compatible re-use of the existing building.
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 proposed rezoning re-use of the building for an automobile body shop will be compatible to surrounding land uses and compatible with other C3 and I1 zoning in the immediate area.
3. Approval is consistent with the preservation of property values in the area. This proposal will allow an underutilized building to be renovated and occupied providing for property improvements, which should improve property values.
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 August 19, 2019.



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

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant D3, LLC (affiliated entity of Oldacre McDonald, LLC)
Address 3841 Green Hills Village Drive, Suite 400
City Nashville State Tennessee Zip 37215
Telephone 615-269-5444 E-mail dbailey@oldacremcdonald.com

Contact Person
Contact Person Mark H. Bains
Address 215 E. Berry Street
City Fort Wayne State Indiana Zip 46802
Telephone 260-423-8902 E-mail mhb@barrettlaw.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 1820 West Washington Center
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 3.392 acres
Proposed density N/A units per acre
Township name Washington Township Township section # _____
Purpose of rezoning (attach additional page if necessary) To allow the property to be used as an automobile body shop
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 Exhibit A

(printed name of applicant) _____ (signature of applicant) _____ (date) _____

See 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.
7-2-2019	131070	8-12-2019	REZ-2019-0049

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

D3, LLC, an Alabama limited liability company

By: 

Name: Tim Dearman

Its: President

"PROPERTY OWNER"

Caream Kamide

Signature: _____

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

D3, LLC, an Alabama limited liability company

By: _____

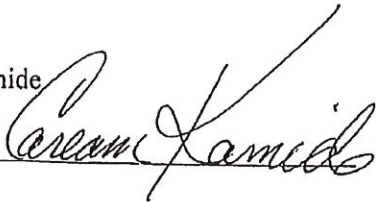
Name: _____

Its: _____

"PROPERTY OWNER"

Caream Kamide

Signature: _____

A handwritten signature in cursive script, appearing to read "Caream Kamide", written over a horizontal line.



Rezoning Petition REZ-2019-0049 - 1820 West Washington Center Rd

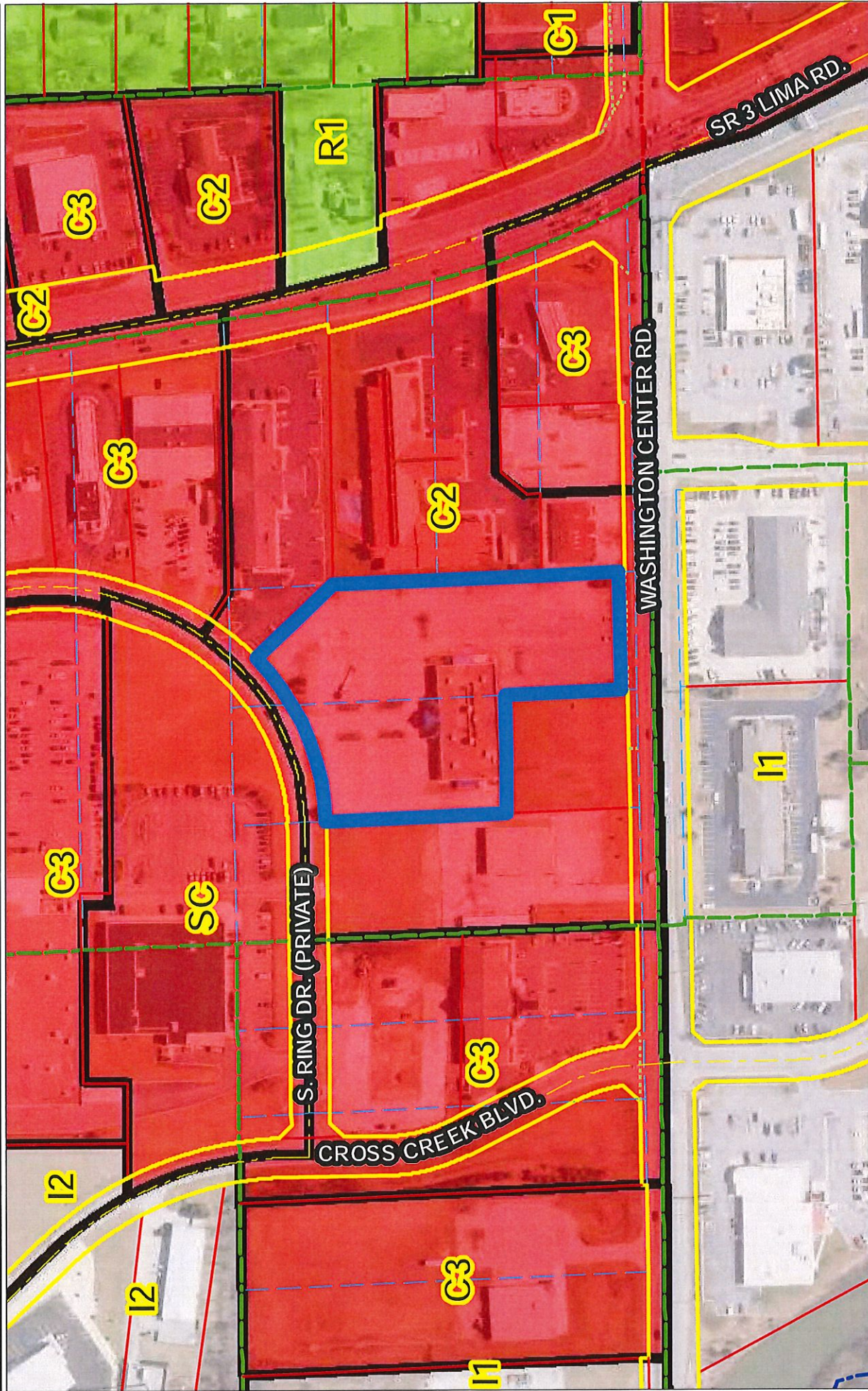


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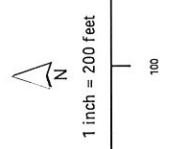


Rezoning Petition REZ-2019-0049 - 1820 West Washington Center Rd

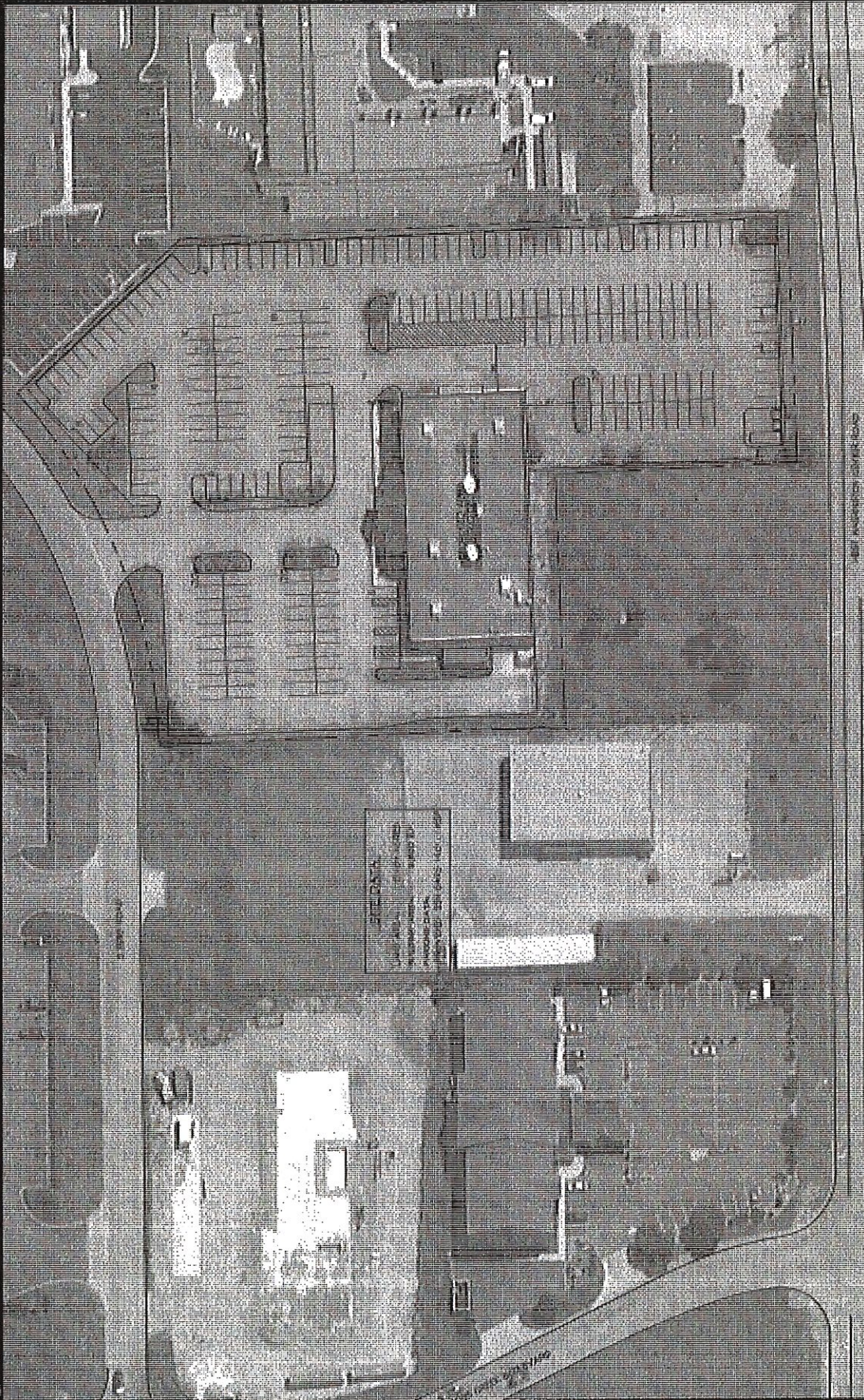


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Photos and Contours: Spring 2009
Date: 7/19/2019



SITE PLAN



SITE PLAN

PROJECT: 1820 West Washington Center Road, Fort Wayne, IN

DATE: 02-11-2014

BY: [Signature]

FILE: [Signature]



1820 WEST WASHINGTON CENTER ROAD
FORT WAYNE, INDIANA

oldacre

mcdonald

1820 WEST WASHINGTON CENTER ROAD, FORT WAYNE, INDIANA 46804
PROJECT: 1820 WEST WASHINGTON CENTER ROAD, FORT WAYNE, INDIANA 46804

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made as of this ____ day of _____, 2019, by **FTW PROPERTIES, LLC** (herein the "Owner") and **D3, LLC** (herein the, "Developer"), under the following circumstances:

WITNESSETH:

WHEREAS, Owner is the fee simple owner of approximately 3.4 acres of 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, Developer has submitted a Zoning Map Amendment Application with the City of Fort Wayne Plan Commission ("Plan Commission"), bearing number REZ-2019-0049 (the "Zoning Application"); and

WHEREAS, pursuant to the Zoning Application, Developer, with Owner's consent, has requested the Real Estate be rezoned to C3 pursuant to the City of Fort Wayne Zoning Ordinance (the "Ordinance") which permits development upon the Real Estate of an automobile body shop; and

WHEREAS, Developer and Owner, in conjunction with the Zoning Application and Development Plan Application, have 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, Owner hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon Owner, Developer, all future owners of the Real Estate, and all lessees of all or a portion of the Real Estate.

1. Paint Fumes. Owner, Developer, all future owners of the Real Estate, and all lessees of all or a portion of the Real Estate that operate an automobile body shop as currently defined by the Ordinance shall utilize and properly maintain a filtration system that meets or exceeds EPA standards with respect to the same.

2. Noise. Owner, Developer, all future owners of the Real Estate, and all lessees of all or a portion of the Real Estate that operate an automobile body shop as currently defined by the Ordinance shall not operate any power tools outside of the automobile body shop in connection with the operation of the automobile body shop and shall keep the overhead doors of the automobile body shop closed with the exception of automobiles entering or exiting the shop or maintenance or construction of shop building. This provision shall not restrict the use of

power tools in connection with regular maintenance of or construction on the Real Estate or any improvements located thereon.

3. Screening. Owner, Developer, all future owners of the Real Estate, and all lessees of all or a portion of the Real Estate that operate an automobile body shop as currently defined by the Ordinance shall comply with all applicable screening requirements as currently stated in the Ordinance pertaining to the storage of wrecked vehicles and other outdoor storage on the Real Estate.

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

5. 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 Developer, Owner, and their successors and assigns as owners of the Real Estate.

6. 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.

7. Amendment or Termination. This Commitment may be amended or terminated upon application by an owner of the Real Estate and the Plan Commission, following a public hearing to consider said amendment or termination.

8. 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.

9. 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.

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

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

12. 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]