

#REZ-2019-0052

BILL NO. Z-19-07-08

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. J-06 (Sec. 03 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:

Part of Fred Eckart Packing Company Addition to the City of Fort Wayne as
recorded In Plat Book 88, page 65, in the Office of the Recorder of Allen County,
Indiana, more particularly described as follows:

BEGINNING at the northeast corner of Lot Numbered One (1) in Fred Eckart
Packing Company Addition to the City of Fort Wayne, thence North 88 degrees 50
minutes 29 seconds East (all bearing in this description are based on WGS84 latitude
and longitude by GPS observation) on north line of a 40-foot wide Private Drive, Lot
"A", and Lot "C" in said Addition, also being the south right-of-way of Main Street,
a distance of 404.00 feet to a 5/8-Inch rebar with an orange identification cap
stamped "ANDERSON FIRM #29A" monumenting the northeast corner of said Lot
"C"; thence South 34 degrees 48 minutes 39 seconds West on the easterly line of said
Lot "C", a distance of 133.47 feet to the southeast corner of said Lot "C"; thence
continuing South 34 degrees 48 minutes 39 seconds West on the easterly line of Lot
"A" in said Addition, a distance of 88.93 feet to a 5/8-Inch rebar with an orange
identification- cap stamped "ANDERSON FIRM #29A"; thence South 88 degrees 50
minutes 29 seconds West, a distance of 272.44 feet to a Mag Nail with an
identification washer stamped "ANDERSON FIRM #29A" on the east line of Lot
"B" in said Addition; thence North 01 degrees 27 minutes 20 seconds West on said
east line and the northerly extension thereof, a distance of 56.82 feet to a Mag Nail
monumenting the southeast corner of the said Lot Numbered One (1); thence
continuing North 01 degrees 27 minutes 20 seconds West on the east line of said Lot
Numbered One (1), a distance of 123.18 feet to the Point of Beginning, containing
1.398 acres of land, more or less, subject to all legal rights-of-way and subject to all
other easements, restrictions and rights affecting the above-described parcel.

and the symbols of the City of Fort Wayne Zoning Map No. J-06 (Sec. 03 Wayne Township),

1 as established by Section 157.082 of Title XV of the Code of the City of Fort Wayne, Indiana
2 is hereby changed accordingly.

3
4 SECTION 2. If a written commitment is a condition of the Plan Commission's
5 recommendation for the adoption of the rezoning, or if a written commitment is modified and
6 approved by the Common Council as part of the zone map amendment, that written
7 commitment is hereby approved and is hereby incorporated by reference.

8
9 SECTION 3. That this Ordinance shall be in full force and effect from and after its
10 passage and approval by the Mayor.

11
12 _____
Council Member

13 APPROVED AS TO FORM AND LEGALITY:

14
15 
16 _____
Carol T. Helton, City Attorney

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Virk Brothers LLC
Address 3212 N. Wells Street
City Fort Wayne State IN Zip 46808
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 1817 W. Main Street
Present Zoning UC Proposed Zoning C3 Acreage to be rezoned 1.40
Proposed density _____ units per acre
Township name Wayne Township section # 03
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>131076</u>	<u>Aug 12-19</u>	<u>RE2-2019-0052</u>

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

Virk Brothers LLC

By: CS Singh

Name: Charanjit Singh

Its: Secretary

"PROPERTY OWNER"

Virk Brothers LLC

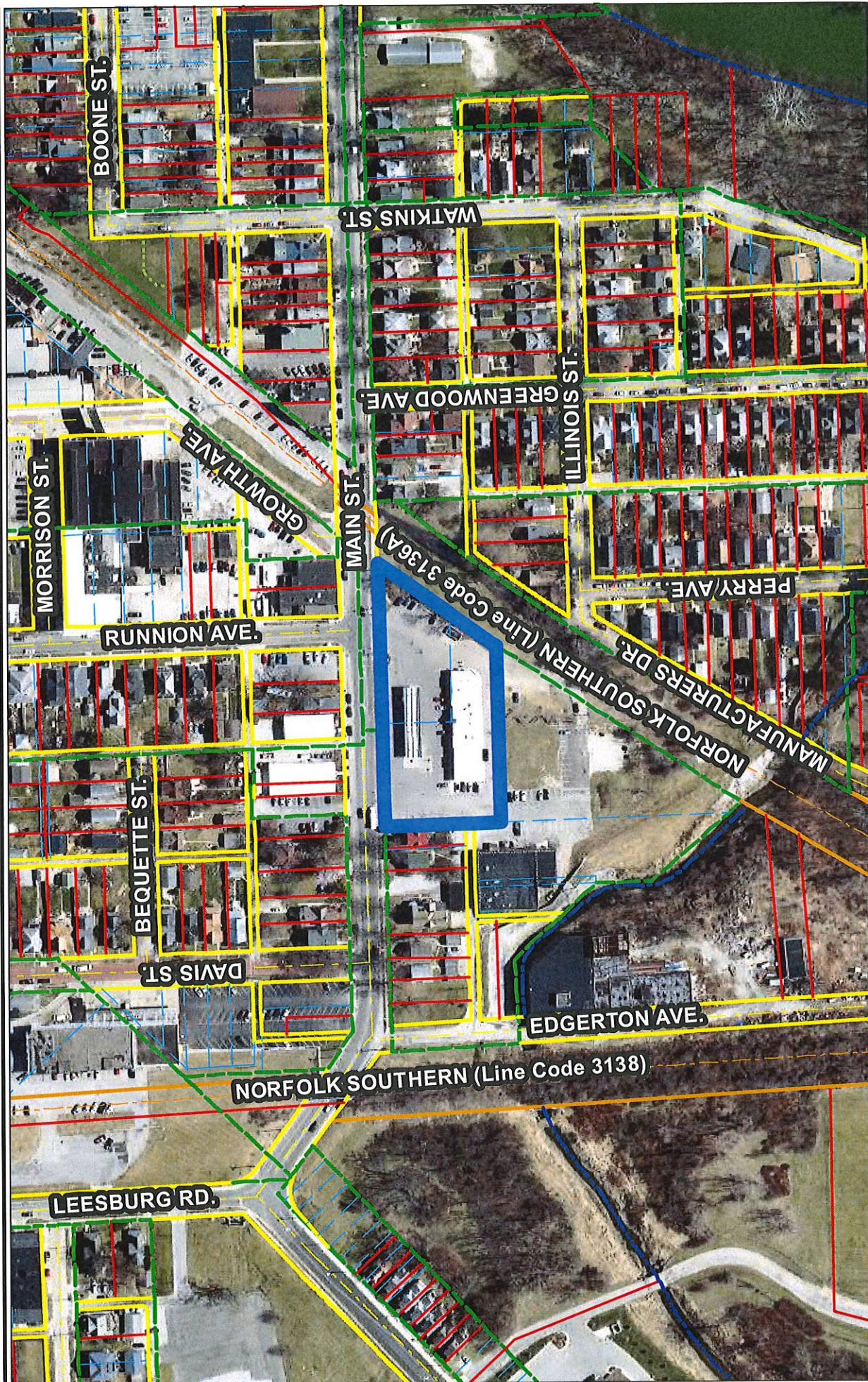
By: CS Singh

Name: Charanjit Singh

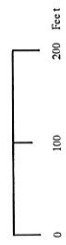
Its: Secretary



Rezoning Petition REZ-2019-0052 - 1817 W Main Street

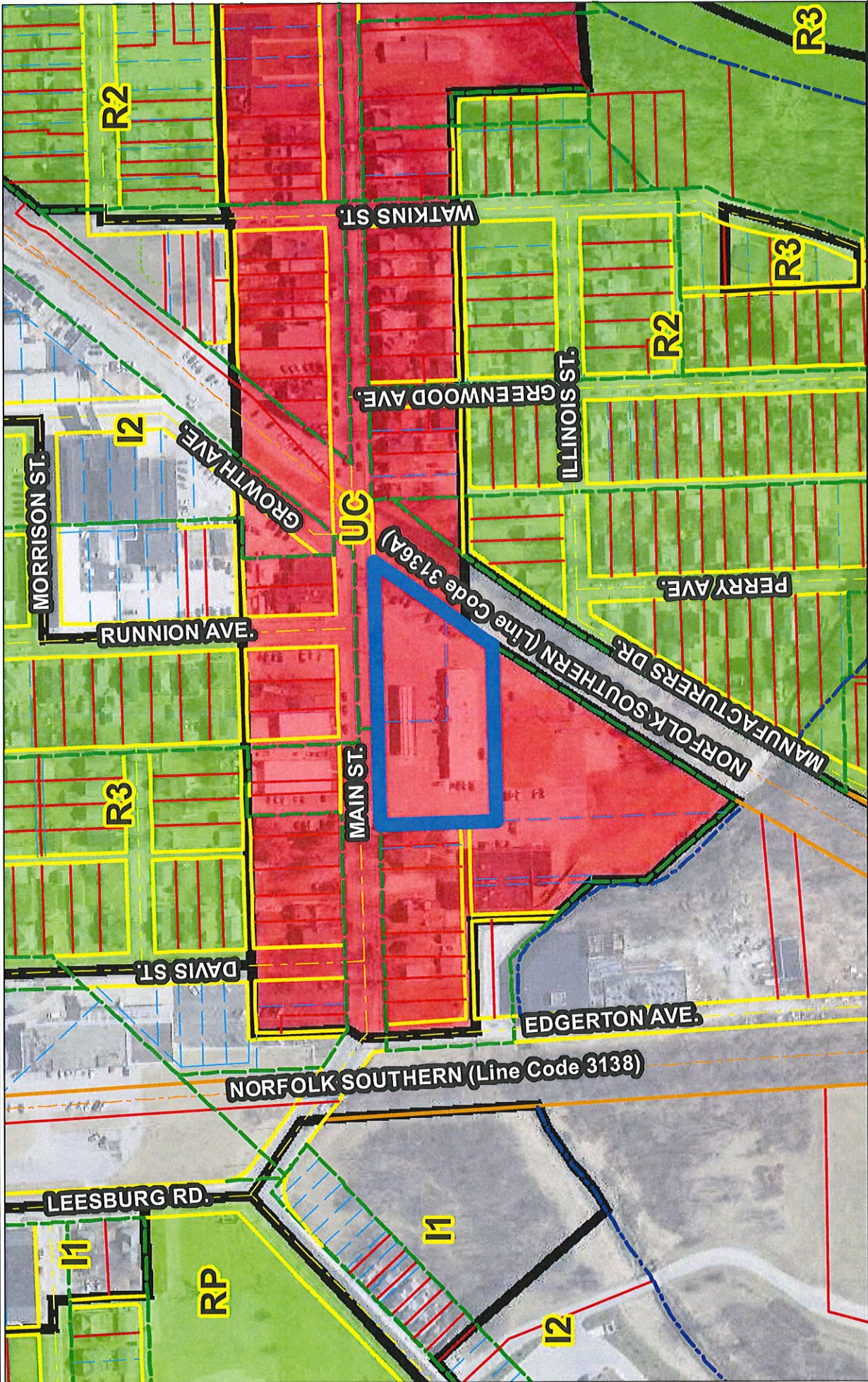


1 inch = 200 feet



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
Photos and Contours Spring 2009
Date: 7/9/2019



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1 inch = 200 feet



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 from its current UC (Urban Corridor) zoning designation to a C-3 (General Commercial) zoning designation 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 UC (Urban Corridor) zoning district pursuant to Section 157.220 of the Ordinance shall continue to be permitted uses on the Real Estate. In addition, the following 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 shall be permitted uses of the Real Estate:

- 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.

Except as herein described, all other uses identified in Section 157.216 of the Ordinance as permitted uses in the C-3 (General Commercial) zoning district shall be prohibited on and from 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]

"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.

EXHIBIT "A"

The land referred to in this Commitment, situated in the County of ALLEN, State of Indiana, is described as follows:

Part of Fred Eckart Packing Company Addition to the City of Fort Wayne as recorded In Plat Book 88, page 65, in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

BEGINNING at the northeast corner of Lot Numbered One (1) in Fred Eckart Packing Company Addition to the City of Fort Wayne, thence North 88 degrees 50 minutes 29 seconds East (all bearing in this description are based on WGS84 latitude and longitude by GPS observation) on north line of a 40-foot wide Private Drive, Lot "A", and Lot "C" in said Addition, also being the south right-of-way of Main Street, a distance of 404.00 feet to a 5/8-Inch rebar with an orange identification cap stamped "ANDERSON FIRM #29A" monumenting the northeast corner of said Lot "C"; thence South 34 degrees 48 minutes 39 seconds West on the easterly line of said Lot "C", a distance of 133.47 feet to the southeast corner of said Lot "C"; thence continuing South 34 degrees 48 minutes 39 seconds West on the easterly line of Lot "A" in said Addition, a distance of 88.93 feet to a 5/8-Inch rebar with an orange identification cap stamped "ANDERSON FIRM #29A"; thence South 88 degrees 50 minutes 29 seconds West, a distance of 272.44 feet to a Mag Nail with an identification washer stamped "ANDERSON FIRM #29A" on the east line of Lot "B" in said Addition; thence North 01 degrees 27 minutes 20 seconds West on said east line and the northerly extension thereof, a distance of 56.82 feet to a Mag Nail monumenting the southeast corner of the said Lot Numbered One (1); thence continuing North 01 degrees 27 minutes 20 seconds West on the east line of said Lot Numbered One (1), a distance of 123.18 feet to the Point of Beginning, containing 1.398 acres of land, more or less, subject to all legal rights-of-way and subject to all other easements, restrictions and rights affecting the above-described parcel.

FACT SHEET

Case #REZ-2019-0052

Bill # Z-19-07-08

Project Start: 23 July 2019

APPLICANT:	Virk Brothers, LLC
REQUEST:	To rezone property from UC/Urban Corridor to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.
LOCATION:	The address of the subject property is 1817 West Main Street (Section 3 of Wayne Township).
LAND AREA:	Approximately 1.4 acres
PRESENT ZONING:	UC/Urban Corridor
PROPOSED ZONING:	C3/General Commercial
COUNCIL DISTRICT:	5-Geoff Paddock
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

12 August 2019 Public Hearing

- Two neighbors spoke at the hearing in opposition.
- Billy Davenport, Tom Freistroffer, Rachel Tobin-Smith, and Judi Wire were absent.

19 August 2019 – Business Meeting

Plan Commission Recommendation: NO RECOMMENDATION

A motion was made by Don Schmidt and seconded by Patrick Zaharako to return the ordinance with a Do Pass recommendation to Common Council for their final decision. This motion failed 4-3. Don Schmitdt then motioned to return the ordinance with No Recommendation, which was seconded by Justin Shurley.

7-0 MOTION PASSED

- Tom Freistroffer and Paul Sauerteig were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
September 5, 2019

Reviewed by:



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

PROJECT SUMMARY

- The site is fully developed with gas pumps/canopy and convenience store with attached retail.
- The site was rezoned to UC in 2015 by the Nebraska Neighborhood with a petition signed by over 52 percent of the property owners located within the rezoning area.
- The gas station was constructed in 2013 while the property was zoned I2.

The petitioner requests a rezoning from UC/Urban Corridor to C3/General Commercial to allow the existing use of the property to comply with the current zoning ordinance. The existing gas station, convenience store, and canopy are located along the south side of West Main Street. The property was zoned I2 in 2013 when the Gas Station was constructed which permitted a gas station, convenience store and attached retail. In 2015 the Nebraska Neighborhood requested to rezone property from Osage Street to Edgerton Avenue. Nebraska Neighborhood filed the rezoning request with a petition that included over 52 percent of the property owners within the rezoning area. The rezoning was approved in 2015 and this property was rezoned from I2 to UC which made the gas station a non-conforming use. Had the property not been rezoned in 2015 to UC, the Ordinance amendment in 2014 would have made the gas station a non-conforming use as well.

The petitioner seeks the allowance of the existing gas station, and the ability to maintain, expand and improve as allowed for a permitted use. The current gas station developed on the property under existing zoning which permitted the development without requiring a rezoning.

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. The gas station and convenience store are located along a fully developed mixed-use corridor and the existing gas station was developed in accordance with the Ordinance effective in 2013 and was a permitted use. This proposal does not include any request to change or increase the intensity of the existing use.

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.

The Nebraska Neighborhood Plan as adopted as an amendment to the comprehensive plan guided the request to rezone this property from I2 to UC encouraged rezoning properties to promote mixed land uses with an urban feel that is compatible with the development pattern along the corridor. By rezoning the corridor to a mixed-use zoning district with an urban development pattern there were approximately four uses (6 percent) within the zoning area that became non-conforming land uses. The goal of the neighborhood with the rezoning request was to allow West Main Street to revitalize itself by providing zoning support that

encourages residential uses along with entrepreneurial mixed use business and personal services and the means whereby the neighborhood may self-direct its future growth. This gas station is one of the four land uses that became non-conforming with the rezoning to UC.

A Special Use approval for the gas station is not available in the UC district, per the 2019 Council amendments to the Zoning Ordinance.

PUBLIC HEARING SUMMARY:

Presenter: Josh Neal, Barrett McNagny, represented the applicant and presented the proposal to the Plan Commission, as outlined above.

Public Comments:

- Chris Shatto, President of Nebraska Neighborhood – Positive things have happened along the corridor since the UC district was approved. The gas station is not kept up well. They do make an effort when a complaint is made. Unhappy with lighting, selling drug paraphernalia, hours, and maintenance. Believes the written commitment can be changed with a change of ownership.*
- Matt Momper, 2431 Main Street – Business on Main Street since 1969. Doesn't think a carwash would fit. Would like to see the zoning remain UC.

Rebuttal:

Applicant is willing to further restrict uses in the UC district, including a carwash.

*The Written Commitment can only be changed through a public hearing and Plan Commission approval.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition REZ-2019-0052

APPLICANT:	Virk Brothers, LLC
REQUEST:	To rezone property from UC/Urban Corridor to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.
LOCATION:	The address of the subject property is 1817 West Main Street (Section 3 of Wayne Township).
LAND AREA:	Approximately 1.4 acres
PRESENT ZONING:	UC/Urban Corridor
PROPOSED ZONING:	C3/General Commercial

The Plan Commission returns Rezoning Petition REZ-2019-0052, with No Recommendation after considering the following:

1. The Plan Commission was unable to reach a majority decision for either a Do Pass or Do Not Pass recommendation.

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 Virk Brothers LLC
Address 3212 N. Wells Street
City Fort Wayne State IN Zip 46808
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
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Present Zoning UC Proposed Zoning C3 Acreage to be rezoned 1.40
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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

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- ☒ 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)

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July 1, 19	131076	Aug 12, 19	RE2-2019-0052

Exhibit A
Rezoning Petition Application
Signature Page

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Virk Brothers LLC

By: Ch Singh

Name: Charanjit Singh

Its: Secretary

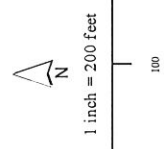
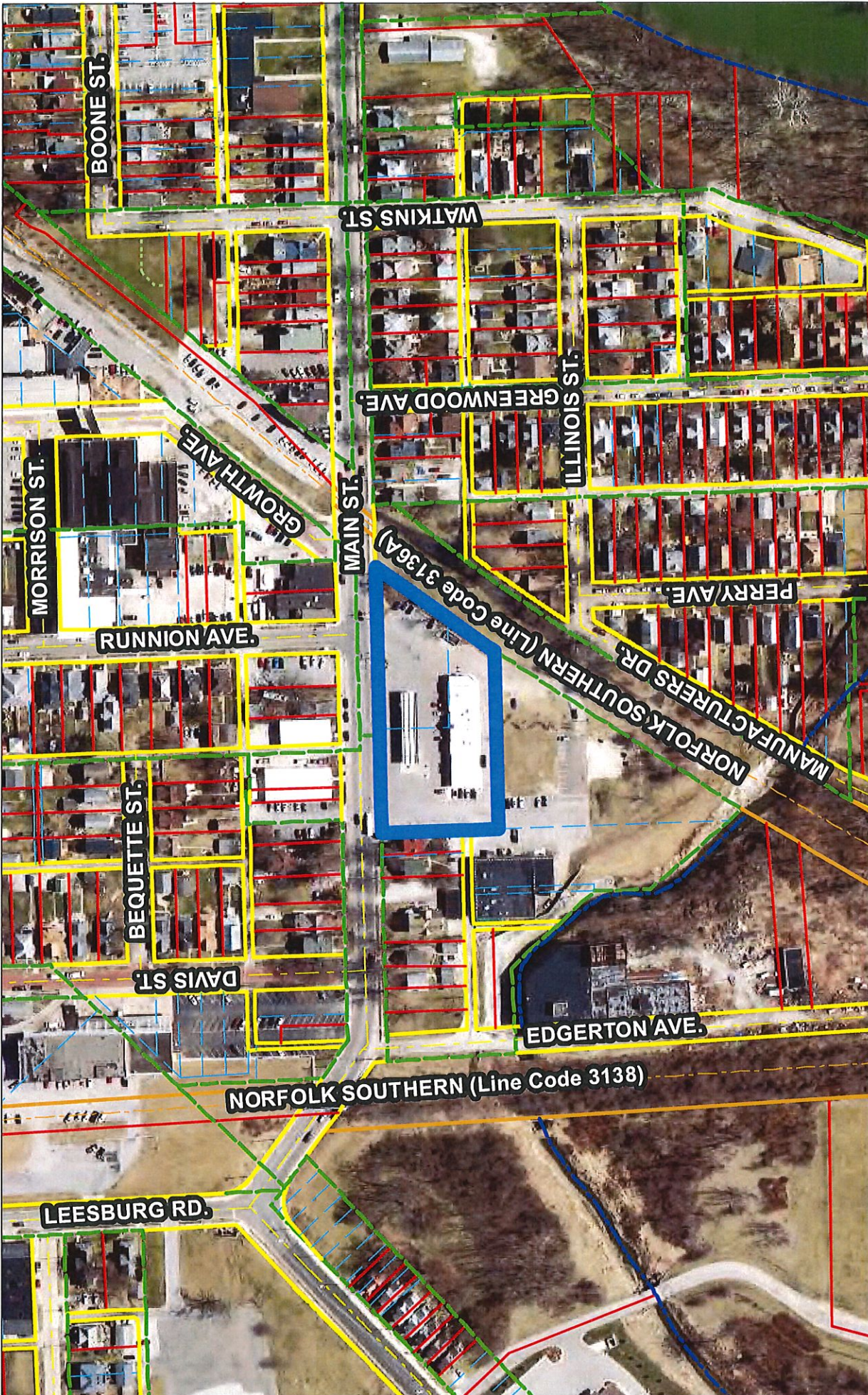
"PROPERTY OWNER"

Virk Brothers LLC

By: Ch Singh

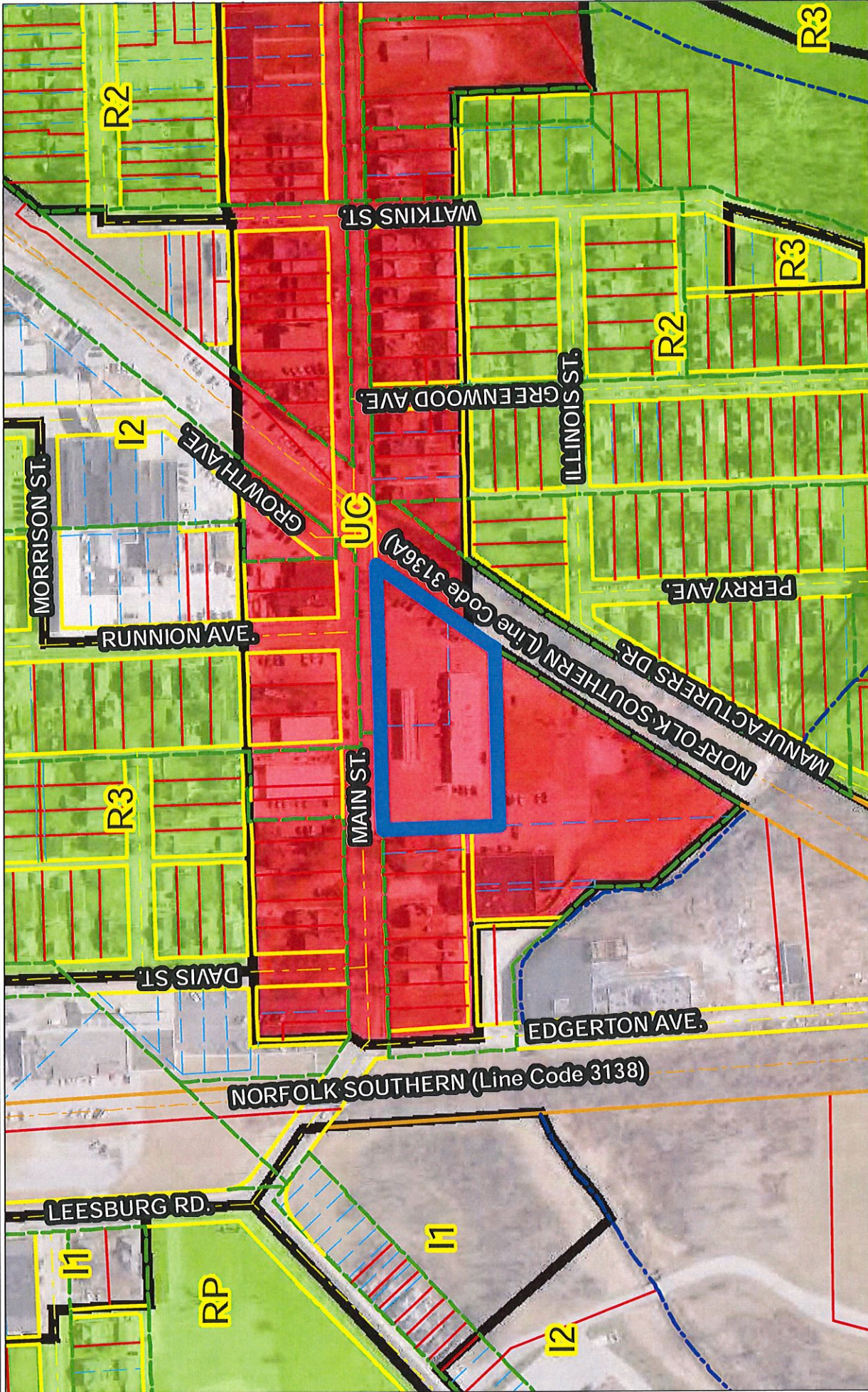
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Its: Secretary



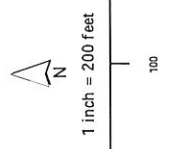
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WRITTEN COMMITMENT

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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 from its current UC (Urban Corridor) zoning designation to a C-3 (General Commercial) zoning designation 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.

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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]

"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.

EXHIBIT "A"

The land referred to in this Commitment, situated in the County of ALLEN, State of Indiana, is described as follows:

Part of Fred Eckart Packing Company Addition to the City of Fort Wayne as recorded in Plat Book 88, page 65, in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

BEGINNING at the northeast corner of Lot Numbered One (1) in Fred Eckart Packing Company Addition to the City of Fort Wayne, thence North 88 degrees 50 minutes 29 seconds East (all bearing in this description are based on WGS84 latitude and longitude by GPS observation) on north line of a 40-foot wide Private Drive, Lot "A", and Lot "C" in said Addition, also being the south right-of-way of Main Street, a distance of 404.00 feet to a 5/8-Inch rebar with an orange identification cap stamped "ANDERSON FIRM #29A" monumenting the northeast corner of said Lot "C"; thence South 34 degrees 48 minutes 39 seconds West on the easterly line of said Lot "C", a distance of 133.47 feet to the southeast corner of said Lot "C"; thence continuing South 34 degrees 48 minutes 39 seconds West on the easterly line of Lot "A" in said Addition, a distance of 88.93 feet to a 5/8-Inch rebar with an orange identification cap stamped "ANDERSON FIRM #29A"; thence South 88 degrees 50 minutes 29 seconds West, a distance of 272.44 feet to a Mag Nail with an identification washer stamped "ANDERSON FIRM #29A" on the east line of Lot "B" in said Addition; thence North 01 degrees 27 minutes 20 seconds West on said east line and the northerly extension thereof, a distance of 56.82 feet to a Mag Nail monumenting the southeast corner of the said Lot Numbered One (1); thence continuing North 01 degrees 27 minutes 20 seconds West on the east line of said Lot Numbered One (1), a distance of 123.18 feet to the Point of Beginning, containing 1.398 acres of land, more or less, subject to all legal rights-of-way and subject to all other easements, restrictions and rights affecting the above-described parcel.

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0052
Bill Number: Z-19-07-08
Council District: 5-Geoff Paddock

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 1.40 acres from UC/Urban Corridor to C3/General Commercial with a Written Commitment to restrict certain uses.

Location: 1817 W. Main Street

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 UC-Urban Corridor, 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.