

#REZ-2019-0054

BILL NO. Z-19-07-10

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 THOSE LANDS LOCATED IN THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 31 NORTH, RANGE 12 EAST
OF THE SECOND PRINCIPAL MERIDIAN IN WASHINGTON TOWNSHIP, ALLEN
COUNTY, STATE OF INDIANA, MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SAID SOUTHWEST
QUARTER OF SOUTHEAST QUARTER; THENCE NORTH 2°19'08" WEST ALONG
THE EAST LINE OF THE SAID SOUTHWEST QUARTER OF THE SOUTHEAST FOR
223.31 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°00'55" WEST FOR
102.57 FEET; THENCE SOUTH 66°36'11" WEST FOR 42.11 FEET TO THE EAST
RIGHT OF WAY LINE OF STATE ROAD 3; THENCE NORTH 23°20'19" WEST
ALONG THE EAST RIGHT OF WAY LINE OF STATE ROAD 3 FOR 79.05 FEET TO A
CURVE CONCAVE TO THE EAST; THENCE ALONG THE CURVE 128.54 FEET
ALSO BEING THE EAST RIGHT OF WAY LINE OF STATE ROAD 3, HAVING A
RADIUS OF 2786.00 FEET WITH A CHORD BEARING OF NORTH 17°28'57" WEST
AND A CHORD DISTANCES OF 128.53 FEET; THENCE NORTH 88°57'46" EAST FOR
203.59 FEET TO THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER ALSO BEING THE WEST LINE OF REDENBECK'S FIFTH
ADDITION AS RECORDED IN PLAT BOOK 25, PAGE 35 WITHIN THE OFFICE OF
THE RECORDER OF ALLEN COUNTY; THENCE SOUTH 2°19'08" EAST ALONG
THE SAID EAST LINE FOR 155.76 FEET TO THE NORTHWEST CORNER OF LOT 22
IN RODENBECK'S FIFTH ADDITION AS RECORDED IN PLAT BOOK 25, PAGE 35
WITHIN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;
THENCE NORTH 88°59'03" EAST ALONG THE NORTH LINE OF SAID LOT 22, FOR
35.0 FEET; THENCE SOUTH 2°19'08" EAST FOR 24.85 FEET; THENCE SOUTH
88°59'03" WEST FOR 35.0 FEET POINT OF BEGINNING, CONTAINING 0.765 ACRES
(33,331 SQ. FT.) MORE OR LESS, SUBJECT TO EASEMENTS, RIGHTS OF WAY
AND RESTRICTIONS OF RECORD.

1 and the symbols of the City of Fort Wayne Zoning Map No. K-38 (Sec. 15 Washington
2 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
3 Wayne, Indiana is hereby changed accordingly.

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

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

12
13 _____
Council Member

14 APPROVED AS TO FORM AND LEGALITY:

15
16 

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 5938 Lima Road
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.76 acres
Proposed density _____ units per acre
Township name Washington Township section # 15
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>13107B</u>	<u>Aug 12-19</u>	<u>PER-2019-0054</u>

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

Virk Brothers, LLC

By: CSingh

Name: Charanjit Singh

Its: Secretary

"PROPERTY OWNER"

Virk Brothers, LLC

By: CSingh

Name: Charanjit Singh

Its: Secretary

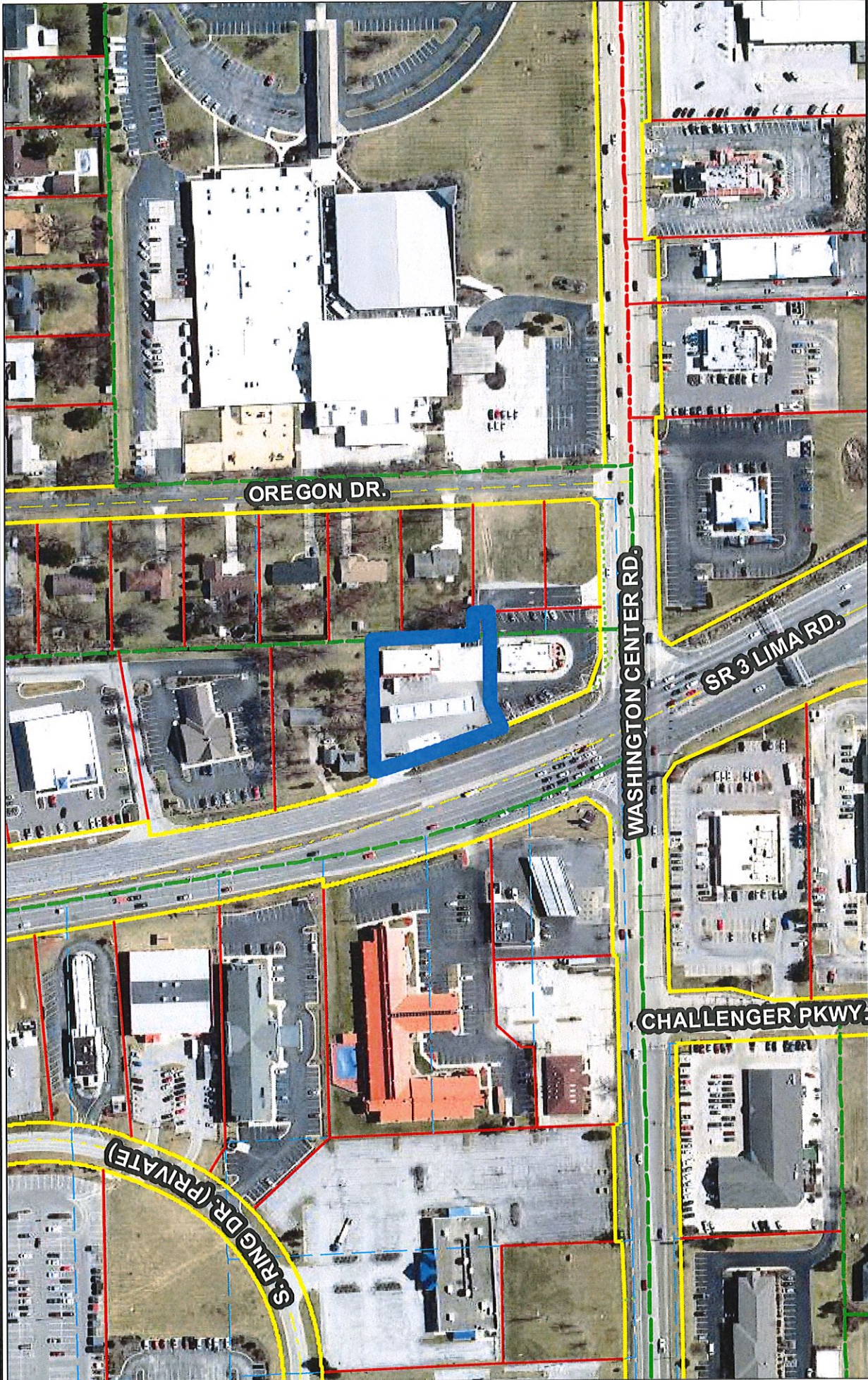
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2. The following are the main reasons for the failure of the project:

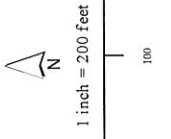
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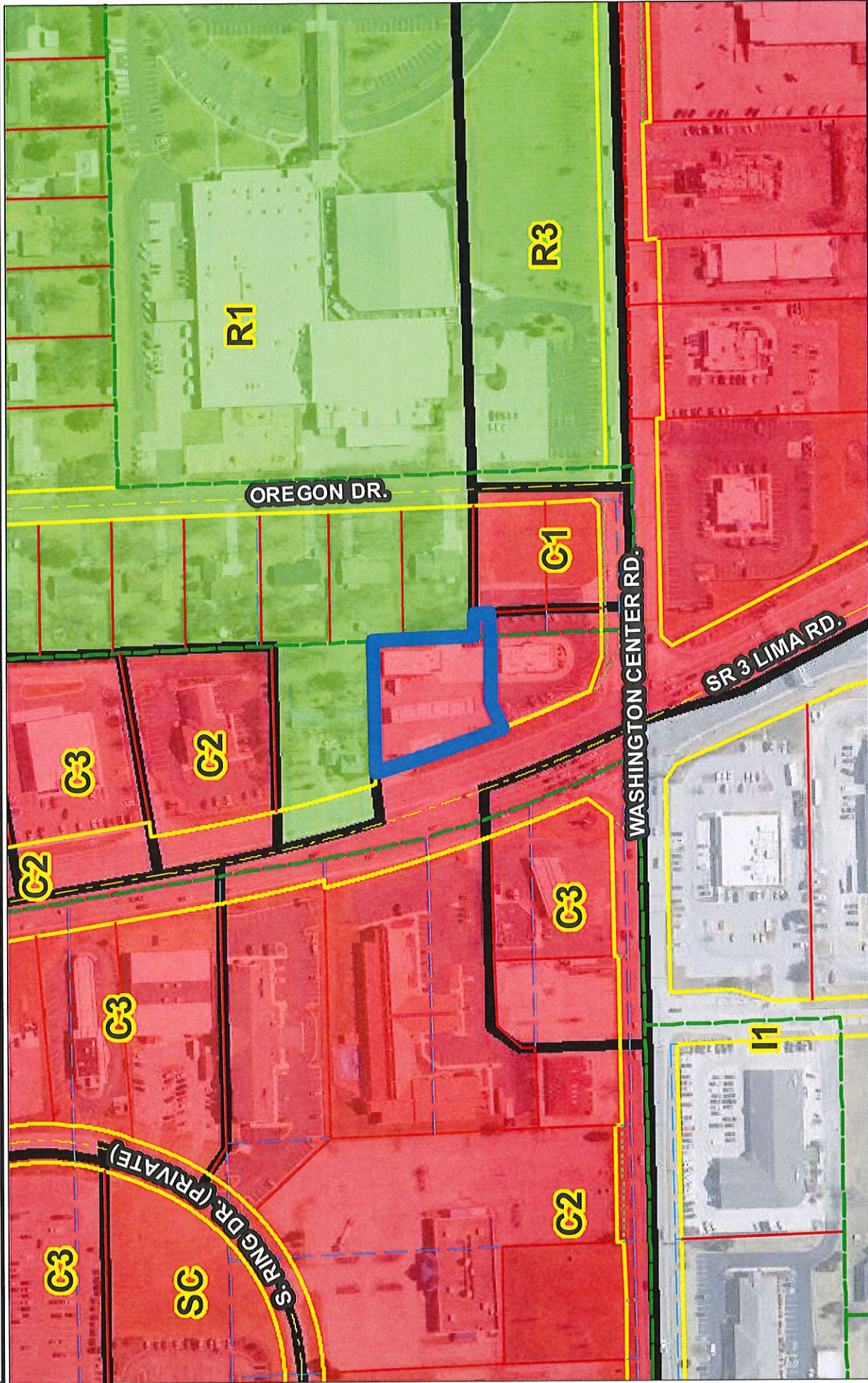
Rezoning Petition REZ-2019-0054 - 5938 Lima Road



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Rezoning Petition REZ-2019-0054 - 5938 Lima Road

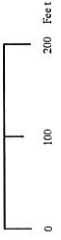


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 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2009
 Date: 7/9/2019



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 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.

EXHIBIT “A”

DRAFT

FACT SHEET

Case #REZ-2019-0054 Bill # Z-19-07-10 Project Start: 23 July 2019

APPLICANT:	Virk Brothers, LLC
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 address of the subject property is 5938 Lima Road (Section 15 of Washington Township).
LAND AREA:	Approximately .8 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 public comments were made 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 Billy Davenport and seconded by Justin Shurley to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

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.
- The site was rezoned to B1B in 1989 (currently C2/Limited Commercial)
- The gas station was completed in 2015

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, convenience store, and canopy are located along the east side of Lima Road just north of the intersection of West Washington Center Road and Lima Road. The property was rezoned to B1B in 1989 and remained undeveloped until 2015. B1B zoning was changed to CM2 with a Zoning Ordinance update. In 2015 the gas station and canopy were developed on existing CM2 zoning which later became C2/Limited Commercial via a Zoning Ordinance amendment. In 2015, when the property was developed, the Ordinance permitted the gas station use in the CM2 district. The 2014 zoning ordinance amendment removed gas stations from the C2 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. 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 commercial corridor and the existing gas station was developed in accordance with the Ordinance effective in 2015 and was a permitted use. 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: Josh Neal, Barrett McNagny, represented the applicant and presented the proposal to the Plan Commission, as outlined above.

Public Comments:

none

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition REZ-2019-0054

APPLICANT:	Virk Brothers, LLC
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 address of the subject property is 5938 Lima Road (Section 15 of Washington Township).
LAND AREA:	Approximately .8 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial

The Plan Commission recommends that Rezoning Petition REZ-2019-0054, 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 gas station was developed in 2015 as a permitted use under the Zoning Ordinance. No changes are proposed to the development. 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 existing development received Plan Commission and legislative review and approval. 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 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 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 5938 Lima Road
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.76 acres
Proposed density _____ units per acre
Township name Washington Township section # 15
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 21-19</u>	<u>131078</u>	<u>Aug 12-19</u>	<u>RES-2019-0054</u>

Exhibit A
Rezoning Petition Application
Signature Page

"APPLICANT"

Virk Brothers, LLC

By: CSingh

Name: Charanjit Singh

Its: Secretary

"PROPERTY OWNER"

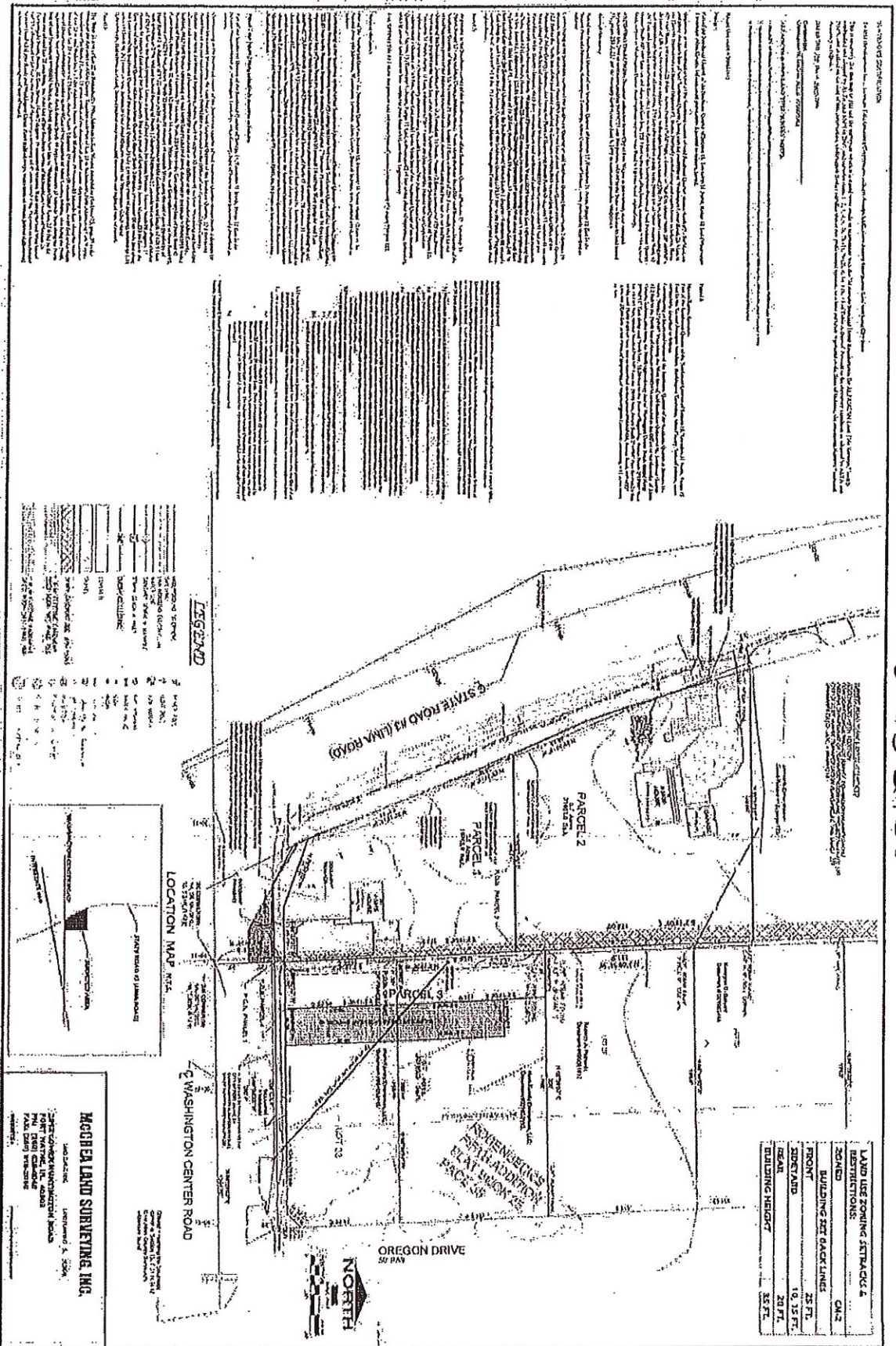
Virk Brothers, LLC

By: CSingh

Name: Charanjit Singh

Its: Secretary

5938 Lima



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THE NEW YORK PUBLIC LIBRARY
ASTOR LENOX TILDEN FOUNDATIONS
1054 FIFTH AVENUE
NEW YORK, N. Y. 10028

Doc Reg ID: 583781
Account #: 602601
Survey
Timestamp: 12/2/2015 4:01 PM

72. The following are the names of the persons who have been named in the above-mentioned affidavits as having been in contact with the subject of the investigation, and the names of the persons who have been named in the above-mentioned affidavits as having been in contact with the subject of the investigation, and the names of the persons who have been named in the above-mentioned affidavits as having been in contact with the subject of the investigation.

[illegible]

JOHN KIMPEL & ASSOCIATES, INC.
LAND SURVEYING
1105 LAKESIDE DRIVE
WILMINGTON, DE 19804
(301) 636-1111

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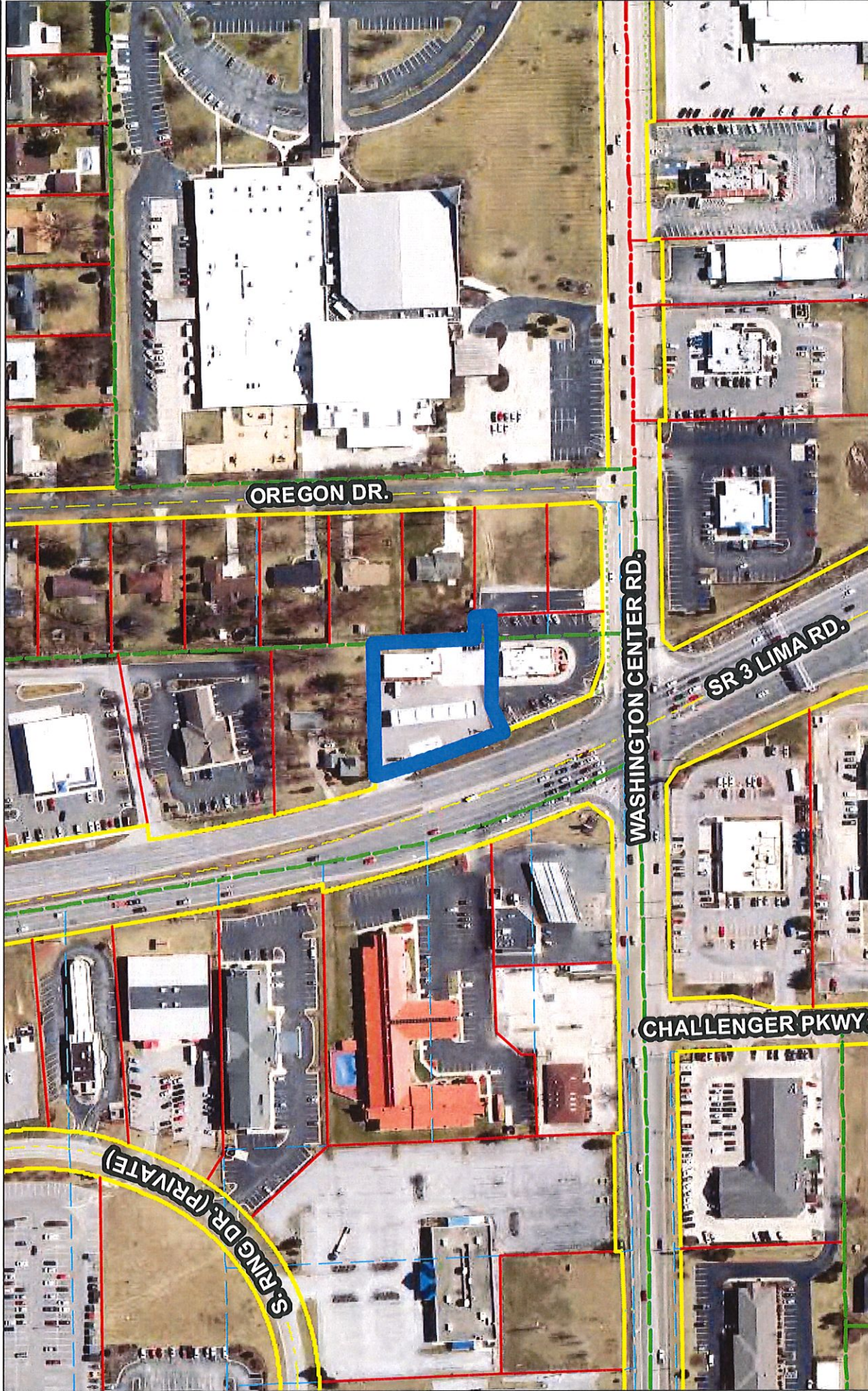
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1968	75 17
1969	18 15 12
1970	20 15
1971	20 15

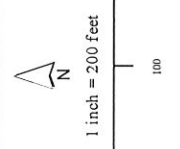


Rezoning Petition REZ-2019-0054 - 5938 Lima Road



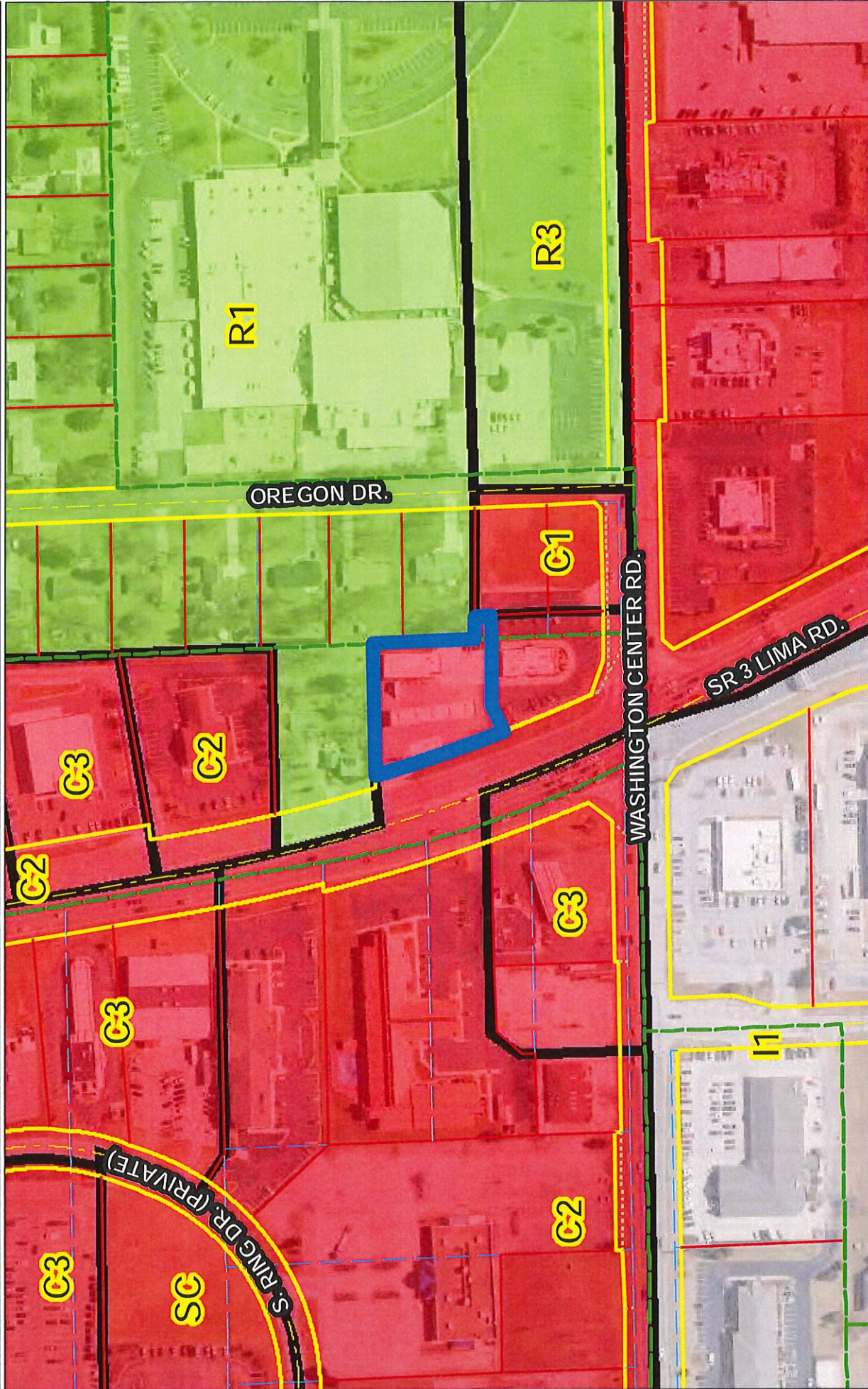
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North American Datum 1983
State Plane Coordinate System, Indiana East
Photo and Groundwork Spring 2009
Date: 7/9/2019



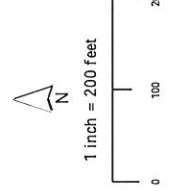


Rezoning Petition REZ-2019-0054 - 5938 Lima Road



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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos: © Google Earth, Spring 2009
Date: 7/18/2019



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

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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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- 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).

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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.

EXHIBIT "A"

DRAFT

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0054
Bill Number: Z-19-07-10
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 0.76 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses.

Location: 5938 Lima 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.