

#REZ-2019-0030

BILL NO. Z-19-05-27

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. C-07 (Sec. 13 of Aboite 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 C2 (Limited
Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
Wayne, Indiana:

LEGAL DESCRIPTION – Deed Book 494, page 369

One acre of ground in the Northeast Quarter of Section 13, Township 30 North,
Range 11 East, more particularly described as follows:
Commencing at the Southwest corner of the East Half of the Northeast Quarter of
Section 13, Township 30 North, Range 11 East; thence North 50 feet; East and
parallel to and 50 feet at right angles distance from the south line of the east half of
the Northeast Quarter of Section 13, a distance of 352.6 feet to a point on the West
Right of Way line of United States Highway Number 24; thence Northeasterly along
the West Right of Way line of said Highway a distance of 853 feet to the place of
beginning of the tract herein described; thence North a distance of 411.5 feet, thence
East a distance of 118.95 feet; thence South a distance of 320 feet to the West Right
of Way line of said Highway Number 24; thence in a Southwesterly direction along
the East Right of Way line of said Highway a distance of 150 feet to the place of
beginning, containing one acre of land, more or less.

ALSO – Deed Book 584, page 418

.69 acre of land in the Northeast Quarter of Section 13, Township 30 North, Range
11 East, being more particularly described as follows:
Commencing at the Southwest corner of the East Half of the Northeast Quarter of
Section 13, Township 30 North, Range 11 East, thence North 50 feet; East and
parallel to and 50 feet at right angles distance from the south line of the east half of
the Northeast Quarter of Section 13, a distance of 352.6 feet to a point on the West
Right of Way line of United States Highway Number 24; thence Northeasterly along
the West Right of Way line of said Highway a distance of 1003 feet to the place of

1 beginning of the tract herein described; thence Northeasterly along the West Right of
2 Way line of said Highway a distance of 164.4 feet; thence northwesterly making an
3 interior angle of 116 degrees 26 minutes with the preceding line a distance of 223.7
4 feet; thence Westerly a distance of 88.6 feet; thence southerly 320 feet to the place of
5 beginning, containing .69 acre of land, more or less.

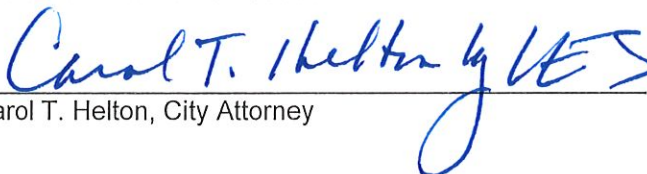
6 and the symbols of the City of Fort Wayne Zoning Map No. C-07 (Sec. 13 of Aboite
7 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
8 Wayne, Indiana is hereby changed accordingly.

9
10 SECTION 2. If a written commitment is a condition of the Plan Commission's
11 recommendation for the adoption of the rezoning, or if a written commitment is modified and
12 approved by the Common Council as part of the zone map amendment, that written
13 commitment is hereby approved and is hereby incorporated by reference.

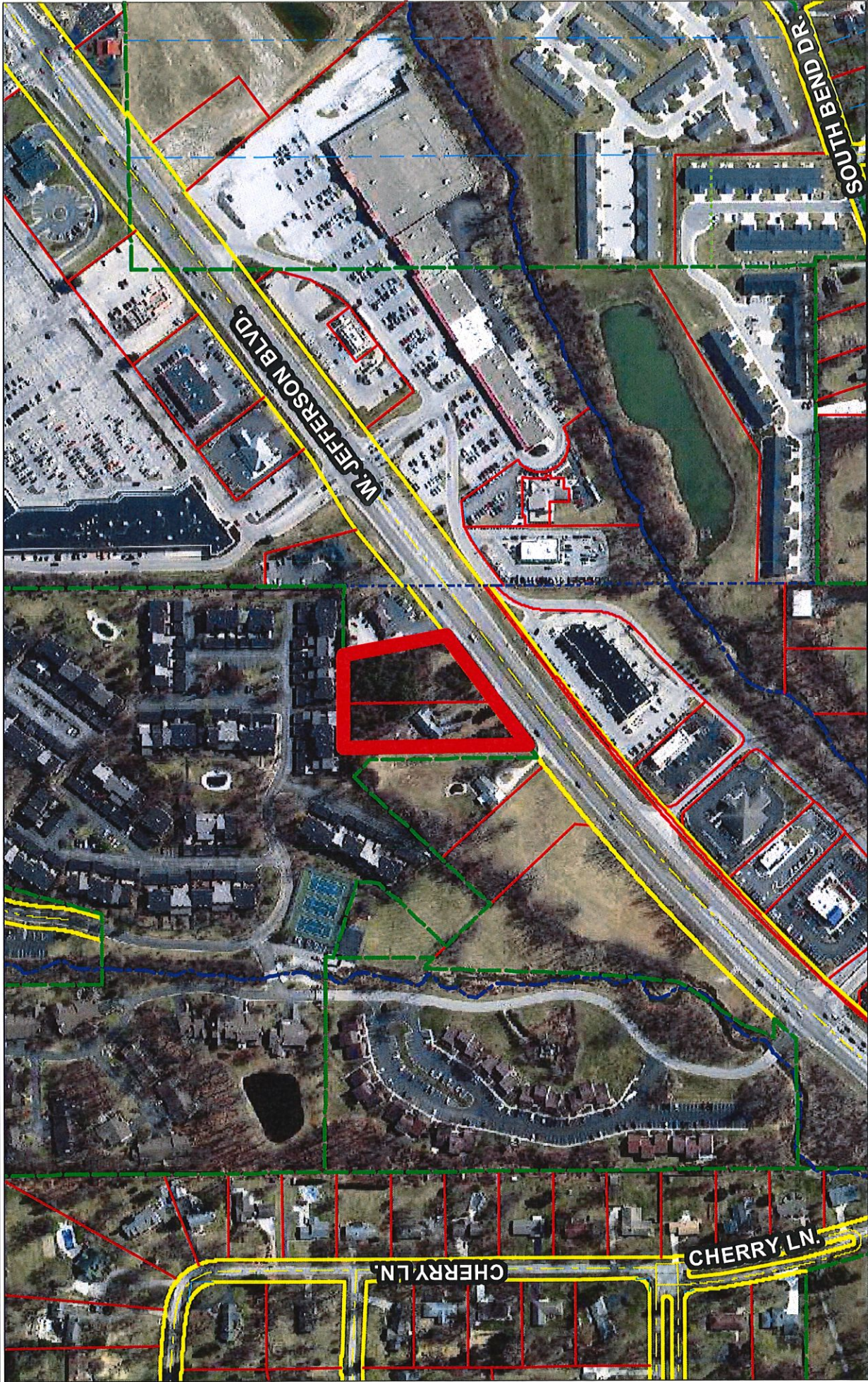
14
15 SECTION 3. That this Ordinance shall be in full force and effect from and after its
16 passage and approval by the Mayor.

17
18 _____
Council Member

19
20 APPROVED AS TO FORM AND LEGALITY:

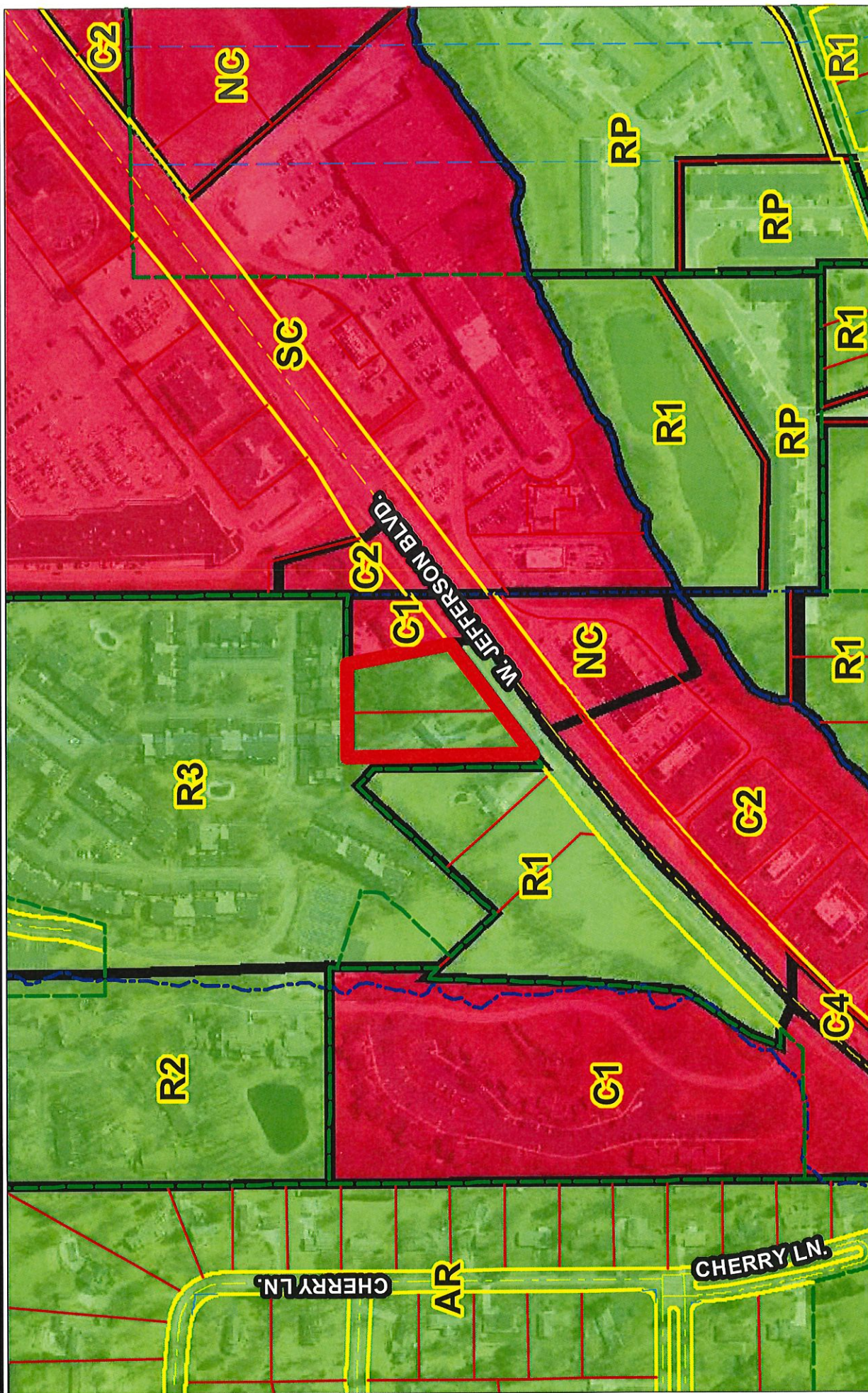
21 
22 _____
23 Carol T. Helton, City Attorney
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Rezoning Petition REZ-2019-0030 and Primary Development Plan PDP-2019-0022- Quintana Plaza



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: 5/17/2019



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1 inch = 300 feet



**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Martin Quintana
Address 3823 Leesburg Road
City Fort Wayne State IN Zip 46808
Telephone 260.247.0106 E-mail martinquintana1170@gmail.com

Contact Person
Contact Person James A. Federoff, Carson LLP
Address 301 W. Jefferson Blvd., Suite 200
City Fort Wayne State IN Zip 46802
Telephone 260.423.9411 E-mail jfederoff@carsonllp.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 6626 W. Jefferson Blvd.
Present Zoning R1 Proposed Zoning C2 Acreage to be rezoned 1.70 A.
Proposed density 2 units per acre
Township name Aboite Township section # 13
Purpose of rezoning (attach additional page if necessary) To allow an existing home to be remodeled and used for a restaurant, and to allow an adjacent new building to be constructed and used by tenants for retail commercial purposes permitted in the C2 district.
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.

Martin Quintana *Martin Quintana* 05.03.19
(printed name of applicant) (signature of applicant) (date)

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

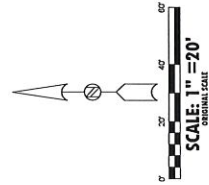
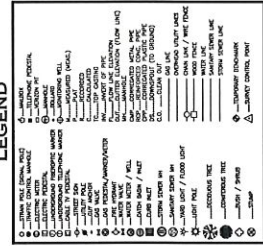
(printed name of property owner) (signature of property owner) (date)

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

Received	Receipt No.	Hearing Date	Petition No.
<u>5-7-2019</u>	<u>130344</u>	<u>6-10-19</u>	<u>RGZ-2019-0030</u>

[illegible]

LEGEND



SITE

**PRIMARY
DEVELOPMENT
PLAN FOR
QUINTANA PLAZA
6926 W. JEFFERSON
BLVD.
FORT WAYNE, INDIANA**



mill C. V. 11

PRIMARY DEVELOPMENT PLAN

[illegible]

SCALE	1"=20'	GREEN ST.	MOV
ISSUE DATE	5/07/19	ORIGATED BY	C.S./DMS

SAVED FILE:
 ME-2019-05-19-5-11...

FACT SHEET

Case #REZ-2019-0030 Bill # Z-19-05-27 Project Start: 28 May 2019	
APPLICANT:	Martin Quintana
REQUEST:	To rezone property from R1/Single Family Residential to C2/Limited Commercial; and approve a primary development plan for an approximately 11,000 square foot commercial facility and associated infrastructure; including waiver requests for a building setback and landscape requirements.
LOCATION:	The site is located on the north side of the 6600 block of West Jefferson Boulevard, to the south of Covington Creek Condominiums (Section 13 of Aboite Township).
LAND AREA:	Approximately 1.7 acres
PRESENT ZONING:	R1/Single Family Residential
PROPOSED ZONING:	C2/Limited Commercial
COUNCIL DISTRICT:	4-Jason Arp
ASSOCIATED PROJECTS:	Primary Development Plan, Quintana Plaza

10 June 2019 Public Hearing

- The applicant requested and was granted a 60-day deferral to work with the neighbors.
- Justin Shurley was absent.

12 August 2019 Public Hearing

- Three persons spoke in support at the hearing.
- Five persons spoke in opposition or with questions 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 Judi Wire and seconded by Justin Shurley to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

5-0-1 MOTION PASSED

- Tom Freistroffer Connie Haas Zuber and Paul Sauerteig were absent.
- Rachel Tobin-Smith abstained.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
September 6, 2019

Reviewed by:


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

PROJECT SUMMARY

At the June public hearing, the applicant's representative, James Federoff, requested a deferral to work with the adjacent neighborhood, prepare building elevations, and create a draft Written Commitment. The Plan Commission granted a 60-day deferral, for a public hearing on August 12, 2019. Staff re-advertised the project in the Journal Gazette, reposted a sign onsite, and sent new courtesy letters to neighbors per Plan Commission Rules of Procedure. Following below is staff's original report. **At the end, there is an update, based on new information provided to staff on August 5, 2019.**

SITE HISTORY

- A single family home was constructed on the property in 1957.
- In late 2018 residential land use permits were issued to raise the roof of the existing home, and then to construct a residential garage addition. Permits were revised to increase the size.
- In April 2019 construction of the addition was halted by the Building Department.
- In May 2019 the applicant filed to rezone the property for commercial purposes.

The petitioner requests a rezoning from R1/Single Family Residential to C2/Limited Commercial to allow a restaurant and retail uses in a building that is in the process of construction. The original 2,090 square foot single family home was built in 1957. The development site includes the house parcel and the vacant parcel to the east. The contractor for the property owner, Martin Quintana, applied for and received land use permits in late 2018 and early 2019 to raise the roof on the existing structure, and to allow an approximately 8,800 square foot garage addition and covered front and rear porches to the house. The owner submitted a subsequent letter stating that the use was residential. In April 2019, the Building Department posted a stop work order for non-compliance with building codes. Prior to filing, the applicant talked to staff about rezoning. At this time, staff stated that a primary development plan would be required and encouraged submitting a Written Commitment that restricted uses. In May, the applicant filed the rezoning petition stating that he would like to use the structure for a restaurant, to be located in the house portion, and multi-tenant retail in the addition.

Rezoning and Development Plan:

The north side of the West Jefferson Boulevard corridor between Covington Plaza and Engle Road has mixed zoning. Historically residential, the corridor has been transitioning to office and personal service uses. Retail zoning can be found at the Covington Plaza entrance and becomes the dominant zoning classification eastward to South Bend Drive. The south side of the corridor is a mix of shopping center, limited retail and offices from Covington Plaza to Engle Road. Those metes and bounds residential lots remaining have become less desirable for residential use as development grows and traffic along the corridor increases.

The subject property is adjacent to Southwest Hair and Day Spa to the east, which has C1/limited Commercial zoning, a residence to the west with R1/Single Family zoning, and Covington Creek Condominiums to the north, which has R3/Multiple Family zoning. The existing house sits approximately 130 feet from the house to the west, and approximately 175 feet from the closest condos to the north. The building addition, which is not yet complete, brings the overall structure to within approximately 50-55 feet of the condos. Commercial building setbacks are 25 feet on all sides. The structure meets all of these except for the west side, where the existing house is 8.4 feet from the property line. As a house, the setback was met; as a commercial structure, a waiver of 17 feet is needed. The applicant has applied for a development standards waiver. The structure is 26 feet at the highest peak, which is within the allowance for both residential and commercial structure height. Required landscape and buffering includes shrubs and trees along the south, north and west sides of the property. The requirements are met on the south and north sides. On the west, the plant material has been provided, but the buffer width (20 feet) is unattainable because of the location of the existing house. The applicant has also requested a waiver for this standard.

Stormwater detention is shown in the front yard, along West Jefferson, with parking between the basin and the building. A driveway runs around the building's east side, to a paved delivery and turn-around area between

the building and rear property line. The dumpster is to be located behind the building on the northwest side. A sidewalk will be installed along West Jefferson and a connection will be made between the building and public walk. Street trees have been requested along the frontage. Signage and lighting is proposed to be within the ordinance limitations.

Staff Discussion:

A typical scenario for new development would be the filing of a rezoning request, along with a primary development plan for a proposed building, which in most cases, meets the ordinance requirements for setbacks, landscaping and buffering, etc. At the public hearing, the Plan Commission can consider the requests and the public can give input on the impacts the proposed development may have on surrounding properties, and consider the effects of a rezoning before any investment has been made on the property. This case has not followed that typical process. Given the fact that a commercial building is already underway and the site has been disturbed, it is difficult for staff to review the project and make a recommendation. Staff is unable to review the proposal as a clean slate, and there is little flexibility to suggest design changes that could help the development better complement and serve the area.

Staff has concerns about potential commercial uses of the building. Some uses within the Limited Commercial district may be compatible, with proper setbacks, buffering, lighting and location of activity areas. Other potential uses could impact the adjacent residential neighborhood. Uses such as bar or tavern, a reception or banquet hall, or an entertainment facility can come with outdoor activity, late hours, and noise. Some of the retail services that involve product and delivery can create incompatible outdoor activity adjacent to the residential neighborhood. There has been no indication of what the intended uses are for the retail portion, therefore staff cannot suggest greater setbacks or increased buffering if necessary. Staff discussed a Written Commitment with the applicant at each meeting. At time of notebook printing (in June), staff has not received a written commitment proposal.

As for the structure and the proposed development plan, staff has the following concerns or questions. The building at this time is at a stage in the construction where it is difficult to see the finished impact. Staff would like information on final materials, proposed doors and delivery locations, and possible outdoor activity areas. Typically, conceptual building elevations are submitted with the primary development plan, to give Plan Commission and the public an idea of the finished product, and allow staff to consider potential impact areas. The rear of the property includes the ordinance required width and amount of buffering, including a solid board fence along the shared property line with the condominiums. While a fence is more effective than the required shrubs, there is some concern about the further removal of mature trees to install a fence. The majority of the trees onsite have been removed for construction, and a significant hill cut has been made on the north side. Staff would like to know how this will be treated or finished, and if it will require further tree removal. It also appears that there is a fence on the Covington Creek property but unclear if it is located on the property line. Given the spring weather and water standing onsite, it has been difficult to get behind or around the building to evaluate the current conditions or take effective pictures for the Plan Commission. Staff has requested site photos from the applicant.

AUGUST 5, 2019 UPDATE

Staff has received a revised Primary Development Plan which is included in this report, along with a draft Written Commitment. The applicant's representative has been conversing with Tom Trent, representing Covington Creek Condominium Association (neighborhood immediately north). Staff also met with Mr. Trent prior to receiving this updated information. Staff believes the two parties are trying to come to an agreement to help the project move forward. Mr. Trent is just receiving this information as well, so there is no response to share with the Plan Commission at the time of report printing (August 5th). A response should be ready for the public hearing.

The applicant contracted Kelty Tappy Design Inc. to work on building elevations and seek a solution to the hill cut and grading and subsequent screening in the rear yard. The result is a proposed two-tiered retaining wall,

with new plantings, and a privacy fence along the rear property line (shared with Covington Creek). Rear open porches are now proposed to be enclosed, reducing potential noise levels from outdoor activity.

The draft Written Commitment addresses commercial uses. The following uses would be prohibited:

1.2

Residential facility, general; residential facility, limited; animal grooming; animal hospital; animal kennel; animal obedience school; arcade; assisted living facility; automobile rental (indoor); automobile sales (indoor); bar or tavern; bed and breakfast; billiard or pool hall; bingo establishment; blood bank; blood or plasma donor facility; boarding/lodging house; bowling alley; brewery (micro); campus housing; child care home (class I or II); club, private; community center; community garden (incl. outdoor); correctional services facility; dating service; dinner theater; dormitory; entertainment facility; farmers market (incl. outdoor); fireworks sales; flea market; fraternity house; funeral home; group residential facility (large); group residential facility (small); homeless/emergency shelter; hospital; hotel; live-work unit; motel; multiple family complex; multiple family dwelling; park or recreational area; parking area (off-site); parking area; parking structure; reception/banquet hall; recreation facility; rental and/or leasing store; residential dwelling unit; residential facility for homeless individuals; restaurant (except as described in Section 0); retirement facility; school; skating rink; sorority house; swim club; tire sales; townhouse complex; veterinary clinic; and zoo.

1.3

Notwithstanding the provisions in Section 1.2 _____ restaurants that sell sandwiches (which by way of example includes, but is not limited to, "Subway", or "Jimmy John's"), or pizza (which by way of example includes, but is not limited to, "Marco's", or "Papa John"), shall be a permitted use on the Real Estate, provided that any such restaurant shall not have drive-through service.

Other items addressed by the Written Commitment:

1.4

Hours of operation for trash pick-up on the Real Estate shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday.

1.5

The site shall be screened and landscaped as proposed in a submitted site and landscape plan dated August ____, 2019, subject to Commission Staff review.

1.6

The exterior appearance of the commercial building shall be substantially the same as presented to the Commission at the public hearing on the Rezoning and the Development Plan, and may not be changed without the prior written consent of the Commission and the Association, which consent shall not be unreasonably withheld, conditioned, or delayed.

1.7

The Commission grants the Fort Wayne Zoning Administrator (the "Zoning Administrator"), or her/his designated staff authority upon written request to consider an extension of any Commission-approved condition for a period not to exceed six months.

Updated Staff Comments:

The Written Commitment has provisions to address the more intensive commercial uses that gave staff concern, particularly noise and rear outdoor activity. With a bar/tavern and some restaurants, the use of an outdoor eating/drinking/smoking area, especially if located on the rear side of the property, could impact the adjacent residential properties. The trash pickup restriction will also help reduce noise and disruption during typical non-business hours. Enforcement of this restriction should be between the neighborhood and the applicant, and not Plan Commission. This can be discussed at the public hearing. As for the

landscape/screening plan, staff has requested cross-section drawings that better depict the current and proposed conditions.

PUBLIC HEARING SUMMARY:

Presenter: Jim Federoff, representing the applicant, presented the proposal to the Plan Commission.

Public Comments In Support:

Tom Trent, Rothberg Logan and Warsco, LLP, representing the Board of Covington Creek Condominiums and Shirley Williams, owner of the day spa to the east. His clients support the project based on the Written Commitment, which includes restrictions on uses, architectural embellishments, and screening and buffering.

Greg Conkling, North Eastern Group – Represents the property owner to the west (vacant ground). Feels the best use for this this area is commercial.

Dennis Pauze, owner of the property immediate west, a rental home. He supports the project based on increased buffering along his property line.

Public Comments in Opposition or with Questions/Concerns:

Carolyn DeVoe – Chair of Southwest Area Partnership and Safe Building and Housing – Concerned about the C2 zoning, feels it should be office zoning first, as a quieter buffer for the residential neighbors. Also questions the quality of the construction and wonders if it is being built to commercial standards.

Pam McDaniel, Briarwood Hills – Thought that anything built here would be office or medical. Concerned about u-turns in the median on West Jefferson. Building should be torn down and rebuilt.

Mike Myers, Covington Manor Drive , Aboite Township Trustee – Feels this is a case of forgiveness rather than permission.

Sarah Worth, Covington Creek Trail – Lives directly behind the building, Trees are already dying, the dumpster is close to her condo, the red roof is atrocious.

Becky Cox, Covington Creek – Concerned about lighting locations.

Rebuttal:

Jim Federoff - The building is not unsafe, the Building Department will inspect all aspects. Much work has been done to make this a commercial building. The access is right-in/right-out. The dumpster is located 120 feet away from the property line and the Written Commitment governs hours of pick up. There is a 15 foot wide easement along the front property line for trees and sidewalk.

John Caffrey, broker – The C2 will allow good neighborhood uses like physical therapy, maybe a bedding company.

Matt Kelty – The finished design will aid in compatibility. They have to get Indiana State Design release for a commercial building. All lighting will be full cut-off. The north side will only have wall-pack lighting for service doors.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition REZ-2019-0030

APPLICANT:	Martin Quintana
REQUEST:	To rezone property from R1/Single Family Residential to C2/Limited Commercial for an approximately 11,000 square foot commercial facility.
LOCATION:	The site is located on the north side of the 6600 block of West Jefferson Boulevard, to the south of Covington Creek Condominiums (Section 13 of Aboite Township).
LAND AREA:	Approximately 1.7 acres
PRESENT ZONING:	R1/Single Family Residential
PROPOSED ZONING:	C2/Limited Commercial

The Plan Commission recommends that Rezoning Petition REZ-2019-0030, 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 the City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The general area has a mix of shopping center, retail and office uses. This proposal comes with a Written Commitment to restrict more intensive commercial uses in the C2/Limited Commercial zoning district.
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. This section of the West Jefferson corridor has transitioned from residential to office, personal services and limited retail. Architectural details and landscaping are being added to the existing building to make it more compatible with surrounding development.
3. Approval is consistent with the preservation of property values in the area. The property was underutilized by an aging single family home. The proposed development represents commercial investment into the property, supporting multiple tenants and enterprises.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. Review by City engineering departments indicates that the site can be developed for the proposed uses and adequate infrastructure is available to service the site.

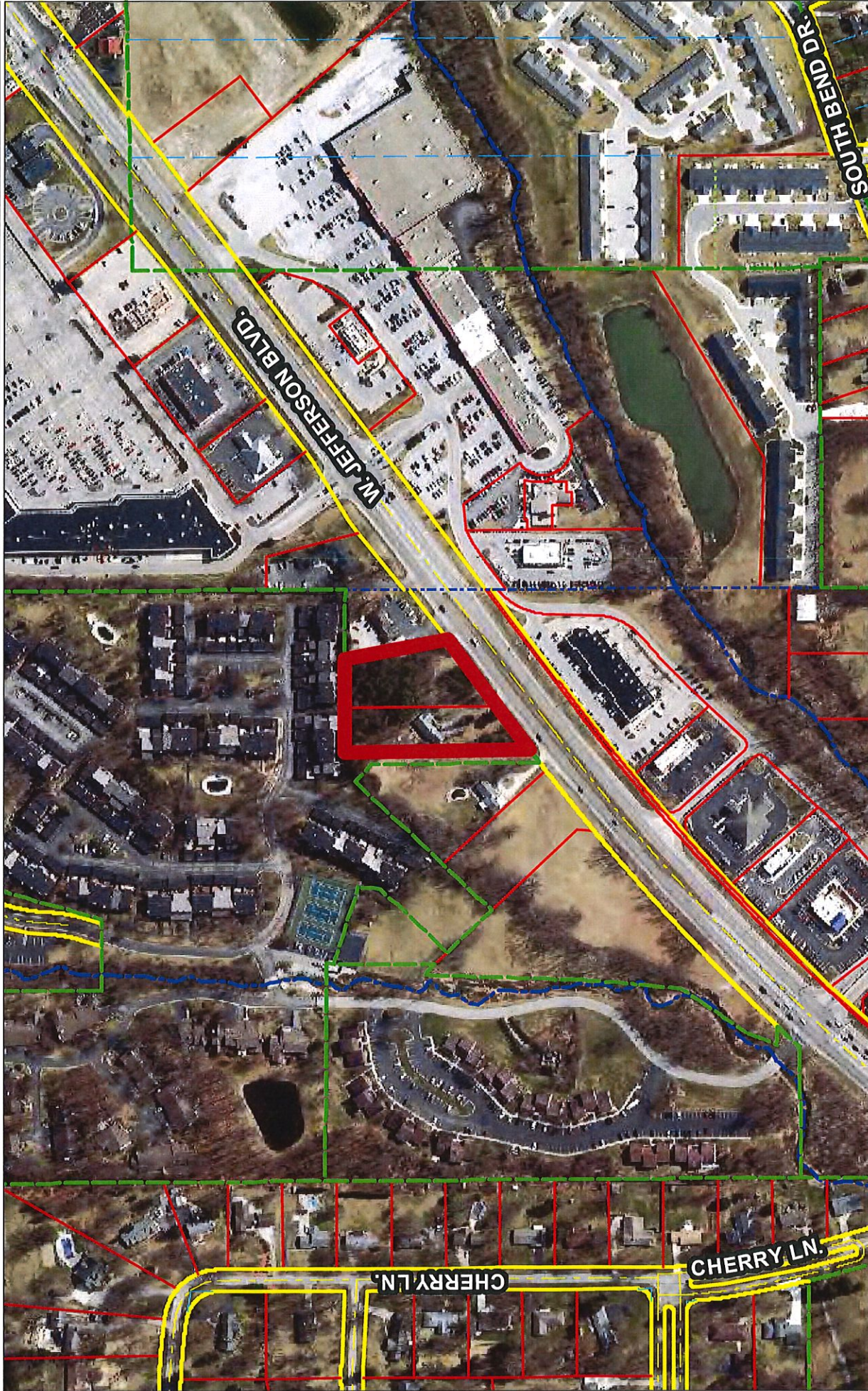
These findings approved by the Fort Wayne Plan Commission on August 19, 2019.



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



Rezoning Petition REZ-2019-0030 and Primary Development Plan PDP-2019-0022- Quintana Plaza

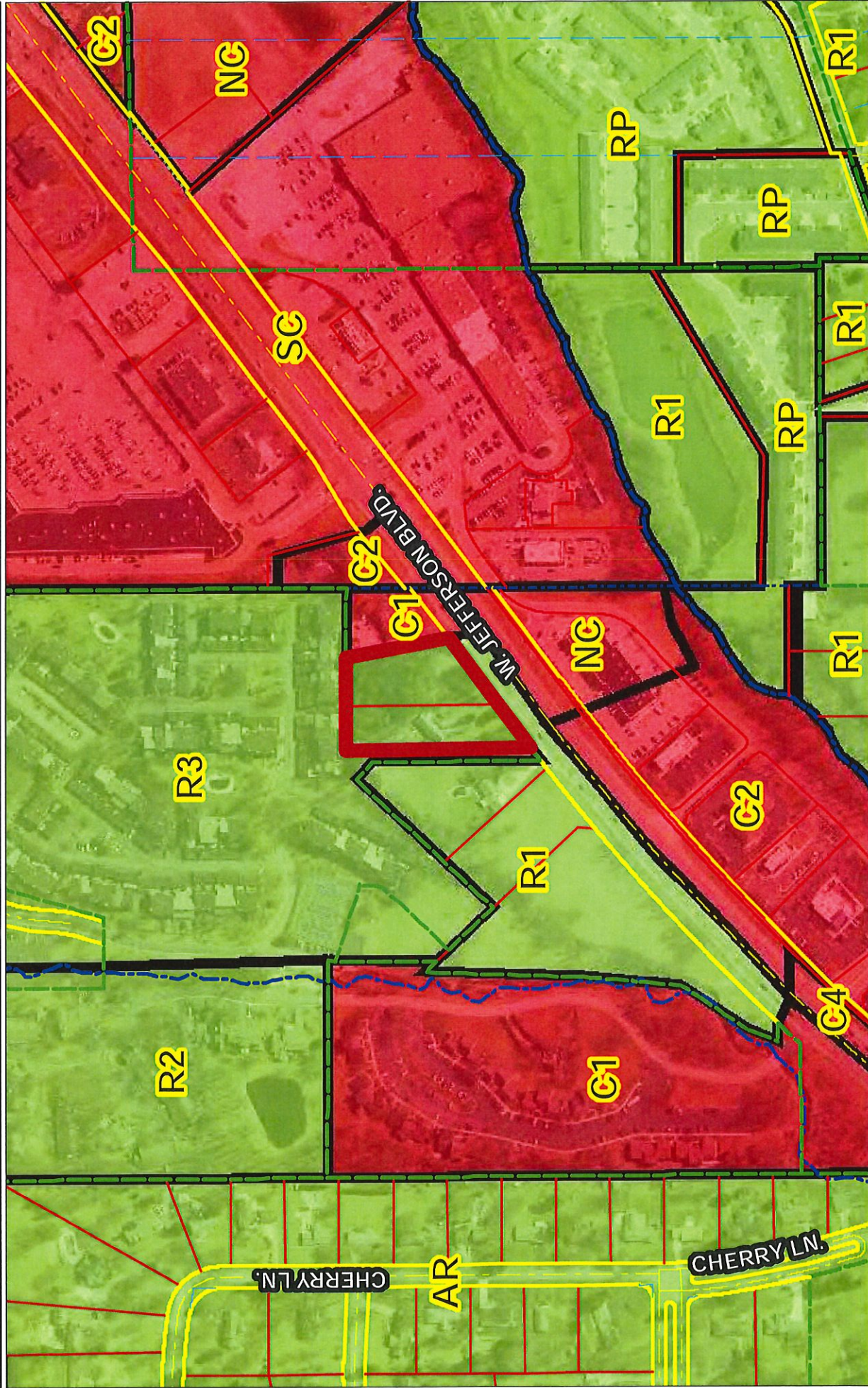


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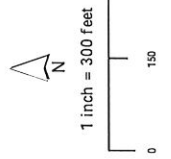
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Department of Planning Services
Rezoning Petition Application

Applicant
Applicant Martin Quintana
Address 3823 Leesburg Road
City Fort Wayne State IN Zip 46808
Telephone 260.247.0106 E-mail martinquintana1170@gmail.com

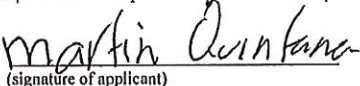
Contact Person
Contact Person James A. Federoff, Carson LLP
Address 301 W. Jefferson Blvd., Suite 200
City Fort Wayne State IN Zip 46802
Telephone 260.423.9411 E-mail jfederoff@carsonllp.com

All staff correspondence will be sent only to the designated contact person.

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Sewer provider City of Fort Wayne Water provider City of Fort Wayne

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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.

<u>Martin Quintana</u> (printed name of applicant)	<u></u> (signature of applicant)	<u>05.03.19</u> (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)
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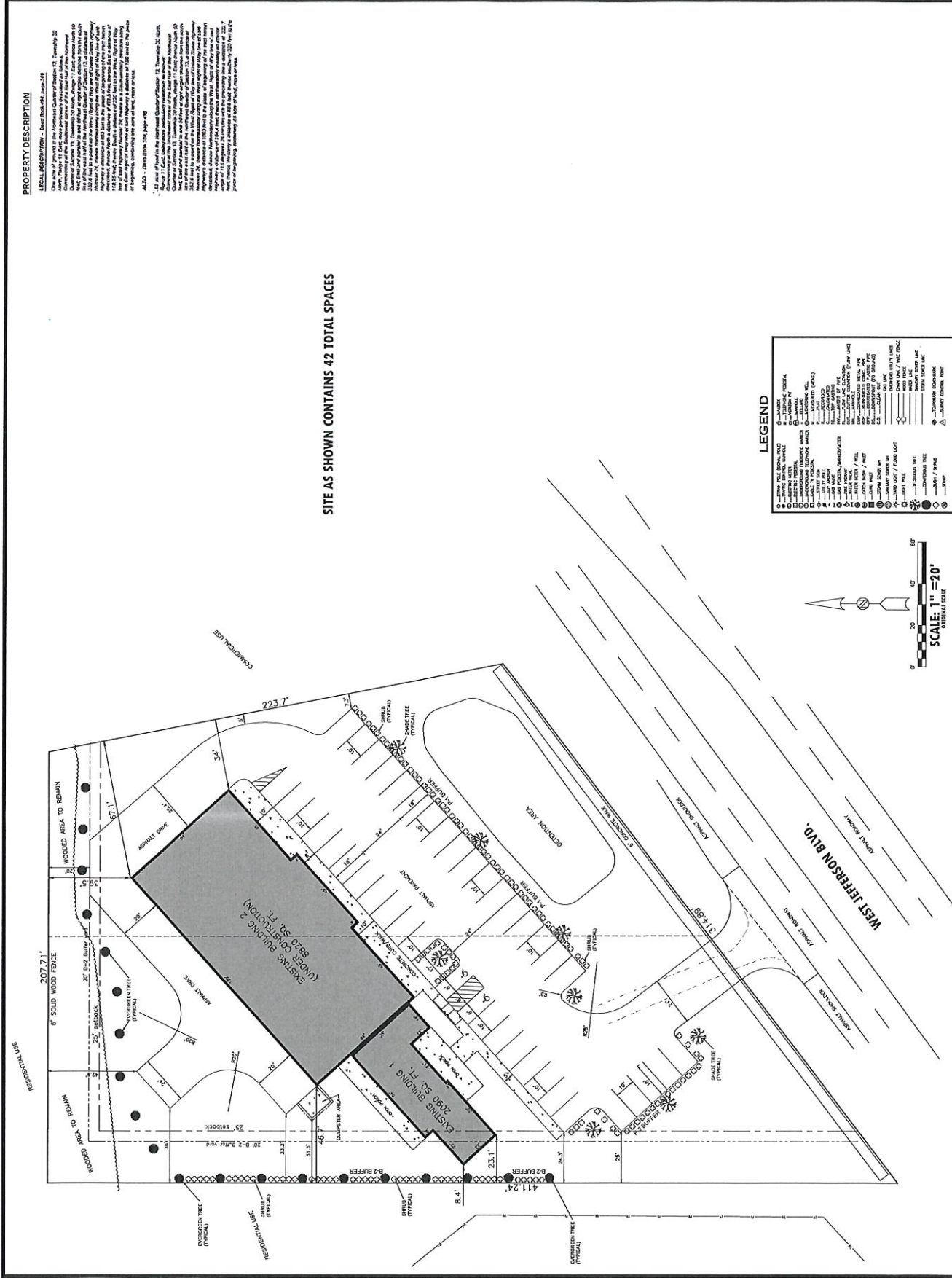
Received <u>5-7-2019</u>	Receipt No. <u>130344</u>	Hearing Date <u>6-10-19</u>	Petition No. <u>REZ-2019-0030</u>
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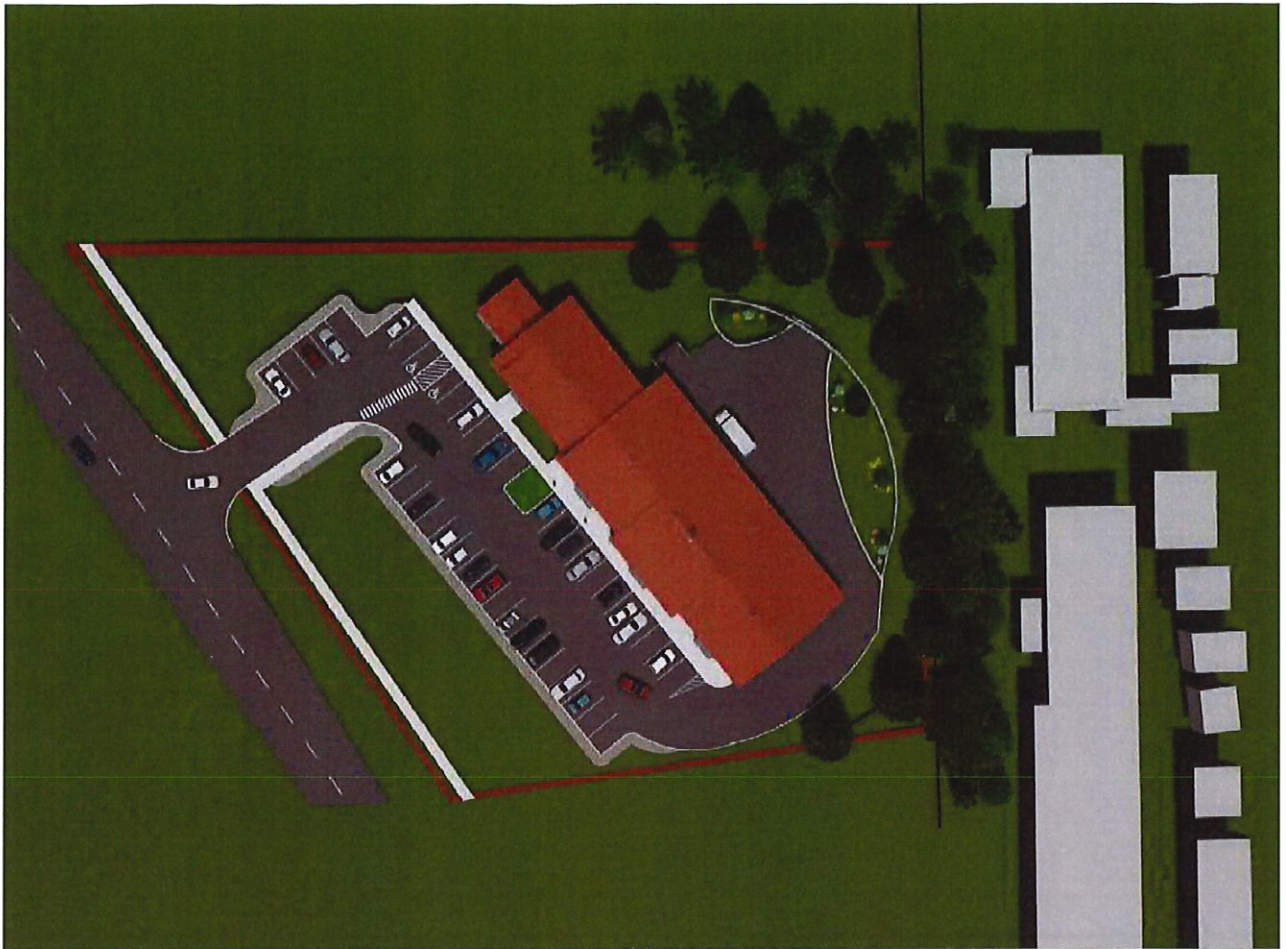
SITE

SCALE	1"=20'	DRAWN BY	MCV
DATE	3/07/19	CHECKED BY	CJS/DWM

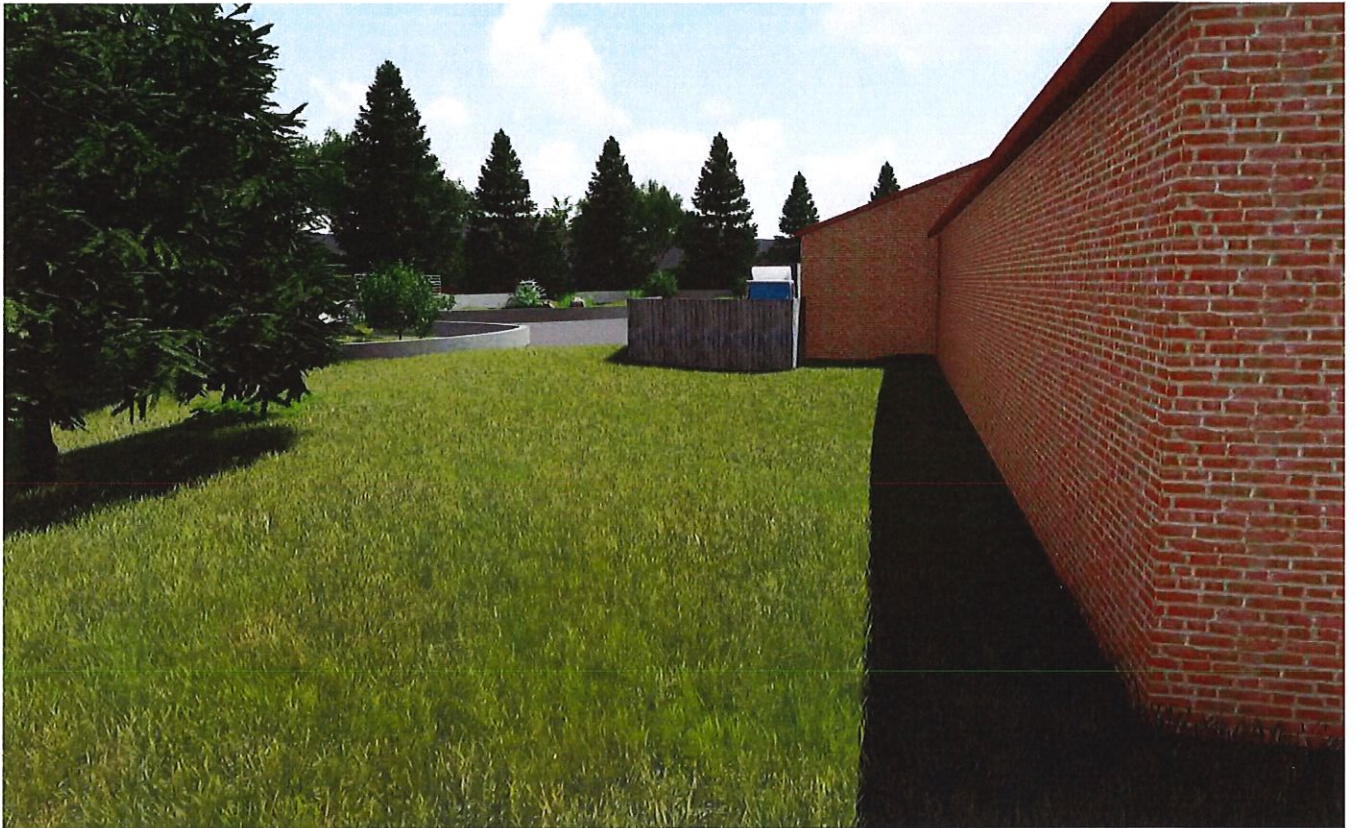
SHEET TITLE:
**PRIMARY DEVELOPMENT
PLAN**

**PRIMARY
DEVELOPMENT
PLAN FOR
QUINTANA PLAZA
6626 W. JEFFERSON
BLVD.
FORT WAYNE, INDIANA**

[illegible]







Tax Parcel(s): _____

**WRITTEN COMMITMENT AND
DECLARATION OF PRIVATE COVENANTS**

This Written Commitment and Declaration of Private Covenants (this "Commitment"), dated as of the 19th day of August, 2019, is made by Martin Quintana ("Owner").

RECITALS

A. By virtue of that certain Trustee's Deed dated July 25, 2018, and recorded on August 15, 2018, as Document Number 2018040850 in the Office of the Recorder of Allen County, Indiana; Owner is the owner in fee simple of certain real estate located in Allen County, Indiana, which is legally described in the addendum attached to this Commitment as Exhibit A (the "Real Estate").

B. On May 7, 2019, Owner applied to the Fort Wayne Plan Commission (the "Commission") to change the zoning map for the Real Estate from R1 Single Family Residential to C2 Limited Commercial in REZ-2019-0030 (the "Rezoning"), and for approval of a Primary Development Plan for Quintana Plaza in PDP-2019-0022 (the "Development Plan").

C. On August 19, 2019, the Commission recommended approval to the Fort Wayne Common Council (the "Legislative Body") of the Rezoning, and approved the Development Plan with certain conditions.

D. As part of the Commission's recommendation of approval of the Rezoning to the Legislative Body, and its approval of the Development Plan, the Commission required Owner to make this Commitment concerning the use and development of the Real Estate.

E. Owner consents and agrees to the terms and restrictions contained in this Commitment, and understands and acknowledges that Covington Creek Condominium Association, Inc., an Indiana nonprofit corporation (the "Association") and 6610 W Jefferson LLC, for themselves and their successors and assigns (collectively, the "Impacted Parties"), agreed to refrain from remonstrating against the Rezoning and the Development Plan based solely upon this Commitment, and the protections afforded to the Impacted Parties set forth herein.

F. Pursuant to Ind. Code § 36-7-4-1015 and the Fort Wayne Zoning Ordinance (the "Ordinance"), the Commission may require an owner of real property to make a written commitment concerning the use or development of real property as part of an adoption of a rezoning proposal and/or primary approval of a development plan.

G. Pursuant to Indiana law, an owner of real property may also confer upon and for the benefit of third parties (such as the Impacted Parties) covenants, easements, equitable servitudes, and other land use restrictions that are not subject to Ind. Code § 36-7-4-1015(b); hence, to the extent Ind. Code § 36-7-4-1015(b) would reduce or eliminate any of the Impacted Parties' rights set forth herein, this Commitment shall be construed to be a private covenant and enforceable by the Association according to the terms hereof.

COMMITMENT/PRIVATE COVENANTS

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 land and be binding upon Owner and all future owners of the Real Estate and all lessees of all or any portion of the Real Estate:

1. **STATEMENT OF COMMITMENTS.** In addition to the Conditions of Approval contained in the Commission's decision recommending approval of the Rezoning and approving the Development Plan, which decision is on record at the Commission's office, Owner shall abide by the following commitments:

1.1 The following uses listed in the Ordinance for a C2 District shall not be permitted on the Real Estate:

Residential facility, general; residential facility, limited; animal grooming; animal hospital; animal kennel; animal obedience school; arcade; assisted living facility; automobile rental (indoor); automobile sales (indoor); bar or tavern; bed and breakfast; billiard or pool hall; bingo establishment; blood bank; blood or plasma donor facility; boarding/lodging house; bowling alley; brewery (micro); campus housing; child care home (class I or II); caterer/catering; club, private; community center; community garden (incl. outdoor); convenience store; correctional services facility; dating service; dinner theater; dormitory; entertainment facility; farmers market (incl. outdoor); fireworks sales; flea market; fraternity house; funeral home; group residential facility (large); group residential facility (small); homeless/emergency shelter; hospital; hotel; live-work unit; motel; methadone clinic (defined as a clinic established for the purpose of dispensing methadone as a means to eliminate or reduce a patient's dependency upon opioids); multiple family complex; multiple family dwelling; neighborhood facility; package liquor store; park or recreational area; parking area (off-site); parking area; parking structure; reception/banquet hall; recreation facility; rental and/or leasing store; residential dwelling unit; residential facility for homeless individuals; restaurants, including fast food style restaurants (except as described in Section 1.2.1); retirement facility; school; skating rink; sorority house; swim club; tire sales; townhouse complex; treatment centers that dispense prescription medication on-site; veterinary clinic; zoo; and all special uses (except as described in Section 1.2.2) set forth in the Ordinance, as amended and modified from time-to-time (collectively, the "Restricted Uses").

Additionally, to the extent the Restricted Uses are inconsistent with any of the C2 limited commercial use categories, as set forth in the Ordinance, the Restricted Uses shall control.

1.2 Notwithstanding the provisions in Section 1.1, the following shall be permitted uses on the Real Estate:

1.2.1 A sandwich bar-style restaurant whose primary business is to sell "made-to-order" or "subway-style" sandwiches (which by way of example includes, but is not limited to, "Subway" or "Jimmy John's", but expressly excludes traditional fast food restaurants such as "McDonalds", "Arbys" and "Wendys"), provided that any such restaurant shall not have outdoor seating or drive-through service. For avoidance of doubt, the sale of alcoholic beverages is expressly prohibited upon the Real Estate.

1.2.2 A religious bookstore or a religious counseling or educational facility, to the extent each such use

shall be deemed to be a “religious institution” under the Ordinance.

- 1.3 Hours of operation for trash pick-up on the Real Estate shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday, and hours of operation for all business operations on the Real Estate shall be limited to 7:00 a.m. to 10:00 p.m.
 - 1.4 The Real Estate shall at all times be screened and landscaped to a standard that is at least as rigorous as set forth in the Development Plan, and is consistent with the applicable requirements under the Ordinance. The landscaping and screening components of the Development Plan are more particularly described in attached **Exhibit B** (the “Landscape Plan Components”). The Landscape Plan Components all shall be included in the landscape plan that is approved by the Commission or its designee for the Real Estate in order for an improvement location permit to be issued for construction on the Real Estate (the “Landscape Plan”). To the extent any trees, shrubs or other features set forth in the Landscape Plan (including any retaining walls) are damaged or destroyed, Owner shall cause such trees, shrubs and/or other features to be promptly replanted, replaced and/or repaired (as applicable) within 30 days following the date written notice is given by the Association to Owner, weather permitting.
 - 1.5 The exterior appearance of the building located on the Real Estate (the “Building”) shall be substantially the same as the forms of building elevations and other architectural renderings and drawings presented to the Commission at the public hearing on the Rezoning and the Development Plan, all of which are on file in the office of the Commission. Neither the Development Plan nor the exterior appearance of the Building may be changed without the prior written consent of the Commission and the Association, which consent shall not be unreasonably withheld, conditioned, or delayed. A copy of the building elevations presented to the Commission at the public hearing is attached hereto and incorporated herein by reference as **Exhibit C**. Notwithstanding the foregoing, the Association shall be deemed to have acted reasonably by withholding its consent to any change to the exterior walls of the Building if such exterior, in its entirety, is not covered by either stone, brick or limestone.
 - 1.6 All exterior site and building lighting on the Real Estate will use sharp cut-off fixtures as defined by the Illuminating Engineers Society of North America. Maximum pole height of free-standing site lighting fixtures will conform to the requirements set forth in the Ordinance. Lighting on the North side of the building will be limited to security wall-pack lighting that is LED, 90-degrees downward directed.
 - 1.7 Outdoor speakers, wherever located upon the Building or the Real Estate, shall be strictly prohibited.
 - 1.8 The Real Estate, the parking lot located thereon and landscaping as set forth in the Landscape Plan shall be maintained in good order and repair, pursuant to City Code of Ordinances Chapter 150, as amended. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.
 - 1.9 The Commission grants the Fort Wayne Zoning Administrator (the “Zoning Administrator”), or her/his designated staff authority upon written request to consider an extension of any Commission-approved condition for a period not to exceed six months.
2. **BINDING EFFECT, MODIFICATION, TERMINATION.** Notwithstanding anything contained herein to the

contrary, this Commitment shall run with the Real Estate, shall survive the Building and any improvements upon the Real Estate, and shall be binding upon Owner, each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate (including lessees of any portion of the Real Estate). This Commitment may be modified or terminated only (a) with the prior written consent of the Association, not to be unreasonably withheld, conditioned, or delayed, and (b) by a decision of the Commission following a public hearing held by the Commission in accordance with Ind. Code § 36-7-4-1015, wherein notice has been given as provided by the Commission's rules of procedure.

3. **RECORDING.** Owner shall, at its own expense, record this Commitment with the Allen County Recorder and shall provide two copies of the recorded Commitment to the Zoning Administrator and the Impacted Parties.

4. **ENFORCEMENT.** The Commission, the Zoning Administrator, and/or the Association, or any of them acting individually, shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of any term, condition, covenant or obligation set forth in this Commitment; and in the event an enforcement action is commenced, the Commission, the Zoning Administrator, and/or the Association (as applicable) shall have (a) the remedies allowed by law and equity, (b) the remedies set forth in the Ordinance (or the ordinance governing Real Estate at the time of the enforcement action) and (c) the remedies described in Ind. Code § 36-7-4-1015, as amended, which remedies shall be cumulative and non-exclusive. Notwithstanding anything contained in the Ordinance or Ind. Code § 36-7-4-1015 to the contrary, 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. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at 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 Commission or the Zoning Administrator, or any successor agency having jurisdiction over the Real Estate. The prevailing party in any such enforcement action initiated by the Association also shall be entitled to recover its reasonable attorney's fees and costs incurred by the prevailing party in such action.

5. **AMENDMENT OR TERMINATION.** This Commitment may be amended or terminated upon application by Owner of the Real Estate, and only with the prior written consent of all owners of the Real Estate and the Association, and following a public hearing before the Commission to consider said amendment or termination. In addition, after a violation of this Commitment and after notice has been issued to Owner and a public hearing is held by the Commission, the Commission may revoke the Development Plan approval if it so elects; provided, however, the Commission's decision to revoke the Development Plan shall not affect the validity or enforceability of this Commitment and this Commitment shall endure any such revocation.

6. **PERMITS.** No permits shall be issued under the Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County Recorder and a recorded and executed copy of the Commitment is delivered to the Zoning Administrator, the Commission, and the Impacted Parties.

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

8. **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.

9. ***EFFECTIVE DATE.*** This Commitment shall be effective upon the date on which this Commitment is recorded in the Office of the Recorder of Allen County, Indiana.

10. ***AUTHORITY.*** This Commitment is made pursuant to Ind. Code § 36-7-4-1015, and with respect to the Association, pursuant to Indiana common law, and, vis-à-vis the Association, this Commitment shall be deemed a private covenant pursuant to Ind. Code § 36-7-4-1015(h).

[The remainder of this page is intentionally left blank]

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Commitment to be executed the day and year first written above.

APPLICANT:

Martin Quintana

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this ____ day of _____, 2019, personally appeared Martin Quintana and acknowledged the execution of the foregoing Commitment.

WITNESS my hand and Notarial Seal.

My commission expires:

_____, Notary Public
(Printed Name)
Resident of Allen County, Indiana

This instrument prepared by, and after recording return to: James A. Federoff, Esq., Carson LLP, 301 W. Jefferson Blvd., Suite 200, Fort Wayne, IN 46802.

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

Exhibit "A"

Legal Description of the Real Estate

One acre of ground in the Northeast Quarter of Section 13, Township 30 North, Range 11 East, more particularly described as follows: Commencing at the Southwest corner of the East Half of the Northeast Quarter of Section 13, Township 30 North, Range 11 East; thence North 50 feet; East and parallel to and 50 feet at right angles distance from the south line of the east half of the Northeast Quarter of Section 13, a distance of 352.6 feet to a point on the West Right of Way line of United States Highway Number 24; thence Northeasterly along the West Right of Way line of said Highway a distance of 853 feet to the place of beginning of the tract herein described; thence North a distance of 411.5 feet, thence East a distance of 118.95 feet; thence South a distance of 320 feet to the West Right of Way line of said Highway Number 24; thence in a Southwesterly direction along the East Right of Way line of said Highway a distance of 150 feet to the place of beginning, containing one acre of land, more or less.

ALSO – Deed Book 584, page 418

.69 acre of land in the Northeast Quarter of Section 13, Township 30 North, Range 11 East, being more particularly described as follows:

Commencing at the Southwest corner of the East Half of the Northeast Quarter of Section 13, Township 30 North, Range 11 East, thence North 50 feet; East and parallel to and 50 feet at right angles distance from the south line of the east half of the Northeast Quarter of Section 13, a distance of 352.6 feet to a point on the West Right of Way line of United States Highway Number 24; thence Northeasterly along the West Right of Way line of said Highway a distance of 1003 feet to the place of beginning of the tract herein described; thence Northeasterly along the West Right of Way line of said Highway a distance of 164.4 feet; thence northwesterly making an interior angle of 116 degrees 26 minutes with the preceding line a distance of 223.7 feet; thence Westerly a distance of 88.6 feet; thence southerly 320 feet to the place of beginning, containing .69 acre of land, more or less.

Exhibit "B"

Landscape Plan

- **North Property Line.** A solid 6 ft. fence shall be installed along the entirety of the North Property Line commencing at approximately the existing grade of the North Property Line. There also will be elevated planting areas supported by a retaining wall in the locations shown on the Development Plan. Coniferous trees will be planted in the approximate areas shown on the Development Plan, and the existing trees and much of the plant material along the North Property Line will be retained in the areas shown on the plan. Disturbance of such areas shall only occur in connection with installing the aforesaid fence along the North Property Line.
- **East Property Line.** Trees and shrubs shall be installed in the areas shown on the Development Plan.
- **West Property Line.** A six-foot high, solid board fence approximately 200 feet long will be installed along the West property line.

Building Elevations



The Southwest Area Partnership

20 June 2019

Dear Plan Commission Members:

The members of the Southwest Area Partnership, representing over 100 neighborhood associations comprising the southwestern quadrant of Fort Wayne, voted in regular session, June 19, 2019, to oppose allowing the property at 6626 West Jefferson to be rezoned from residential to C-2 Commercial.

During the meeting a number of objections were cited, including the adverse impact on the adjacent neighborhood, and the plainly visible shoddy construction suggesting methods and materials lying invisible within the walls are not commercial grade and would put the public at risk should the property be converted from residential to commercial use.

We also felt strongly the owner had flaunted the established construction standards expressed in the Allen County Building Code by not taking the proper permits and approvals until long after their intentions had changed.

Their actions seem a calculated challenge to the rules that govern safe construction in Allen County.

Most importantly, we feel the interests of the many adjacent homeowners were not taken into consideration by the building owner in what looks also to be an attempted circumvention of the spirit of our zoning laws.

The sentiment of SWAP members during discussion was either to maintain the R-1 zoning or to raze the building.

Sincerely,

Carolyn DeVoe
Chairwoman

Arline Nation
Vice Chairwoman

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0030
Bill Number: Z-19-05-27
Council District: 4-Jason Arp

Introduction Date: May 28, 2019

Plan Commission
Public Hearing Date: June 10, 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 1.70 acres from R1/Single Family Residential C2/Limited Commercial.

Location: 6626 West Jefferson

Reason for Request: To allow an existing home to be remodeled and used for a restaurant and to allow an adjacent new building to be constructed and used by tenants for retail and commercial purposes (*per rezoning application*).

Applicant: Martin Quintana

Property Owner: Martin Quintana

Related Petitions: Primary Development Plan, Quintana Plaza

Effect of Passage: Property will be rezoned to the C2/Limited Commercial zoning district, which will allow retail and restaurant uses.

Effect of Non-Passage: The property will remain zoned R1/Single Family Residential and the property may be used for residential purposes. A commercial structure is not permitted in the single family district.