

#REZ-2021-0003

BILL NO. Z-21-02-11

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. N-58 (Sec. 1 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 C2 (Limited Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort Wayne, Indiana:

Part of the Northwest Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of Lot Number 7 in Fallen Timbers, Section A, a subdivision in the Northwest Quarter of Section 1, Township 31 North, Range 12 East; thence North 04 degrees 40 minutes 40 seconds East – deed (thence North 04 degrees 40 minutes 40 seconds West – measured) along the East line of said Lot Number 7, a distance of 271.04 feet to the Northeast corner of Lot Number 7; thence South 89 degrees 48 minutes 02 seconds East along the Easterly extension of the North line of said Lot Number 7, a distance of 166.20 feet to a point on the Westerly right-of-way line of State Road #327 (Coldwater Road); thence South 04 degrees 40 minutes 40 seconds East along said Westerly right-of-way line, a distance of 71.00 feet; thence continuing along said Westerly right-of-way line Southwesterly, a distance of 199.95 feet along a tangent curve deflecting to the right, having a radius of 924.93 feet and subtended by a chord having a length of 199.56 feet and bearing of South 01 degrees 58 minutes 40 seconds West; thence North 89 degrees 44 minutes 33 seconds West, a distance of 144.60 feet to the Point of Beginning, containing 1.00 acre – deed (0.994 acre – measured), more or less.

and the symbols of the City of Fort Wayne Zoning Map No. N-58 (Sec. 1 of Washington Township), as established by Section 157.082 of Title XV of the Code of the City of Fort Wayne, Indiana is hereby changed accordingly.

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

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

Council Member

APPROVED AS TO FORM AND LEGALITY:


Carol T. Helton, City Attorney

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2021-0003
Bill Number: Z-21-02-11
Council District: 2 – Russell Jehl

Introduction Date: February 23, 2021

Plan Commission
Public Hearing Date: March 8, 2021 (not heard by Council)

Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

Synopsis of Ordinance: To rezone 1.0 acre from C1/Professional Office and Personal Services to C2/Limited Commercial

Location: 9915 Coldwater Road

Reason for Request: To allow for a retail floor covering store.

Applicant: Zac Coleman

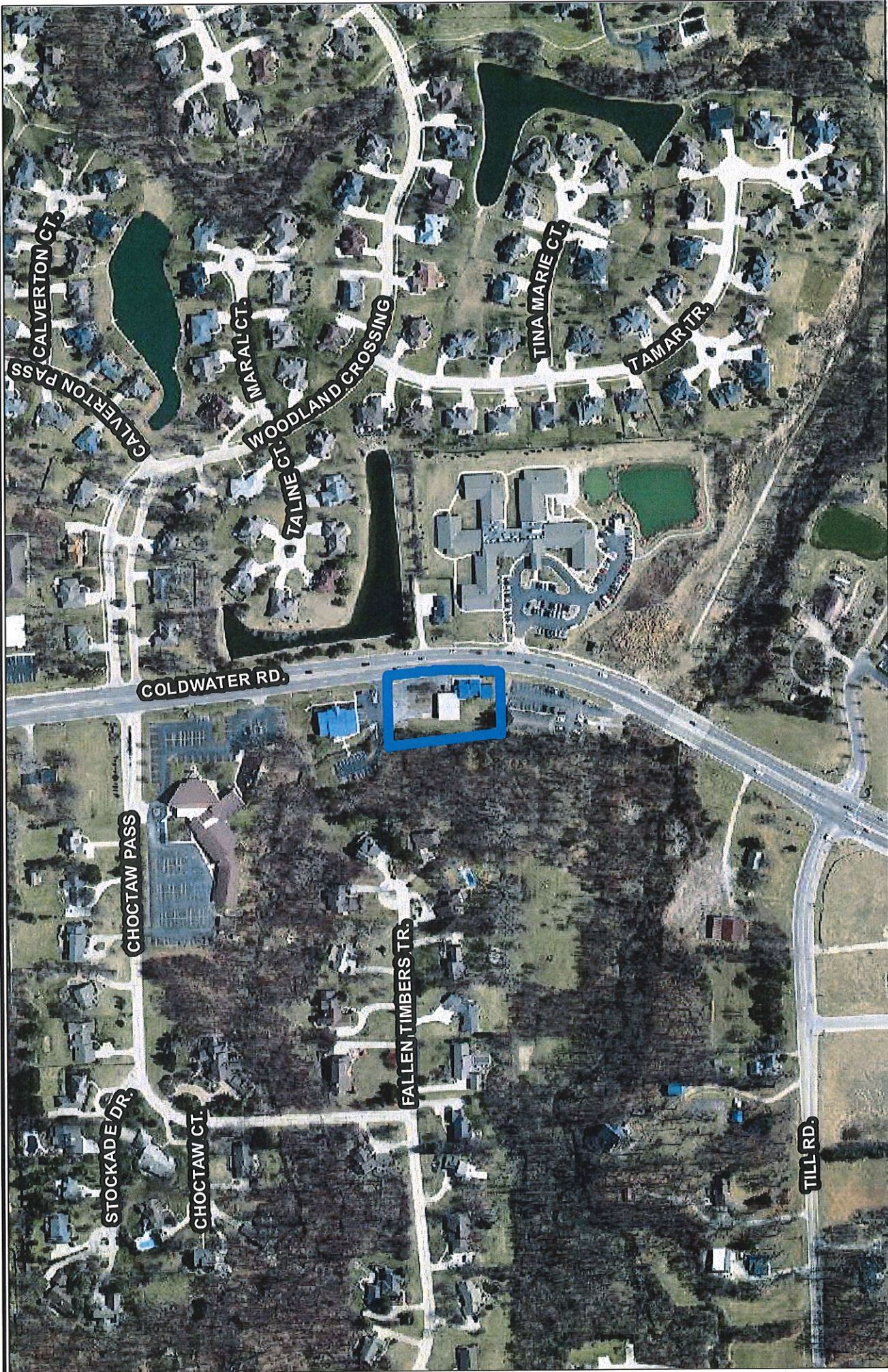
Property Owner: Bryan Murphy

Related Petitions: none

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

Effect of Non-Passage: The property will remain zoned for professional office and personal services. Retail sales are not permitted in the C1 zoning district.

Rezoning Petition REZ-2021-0003 (9915 Coldwater Rd)



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.

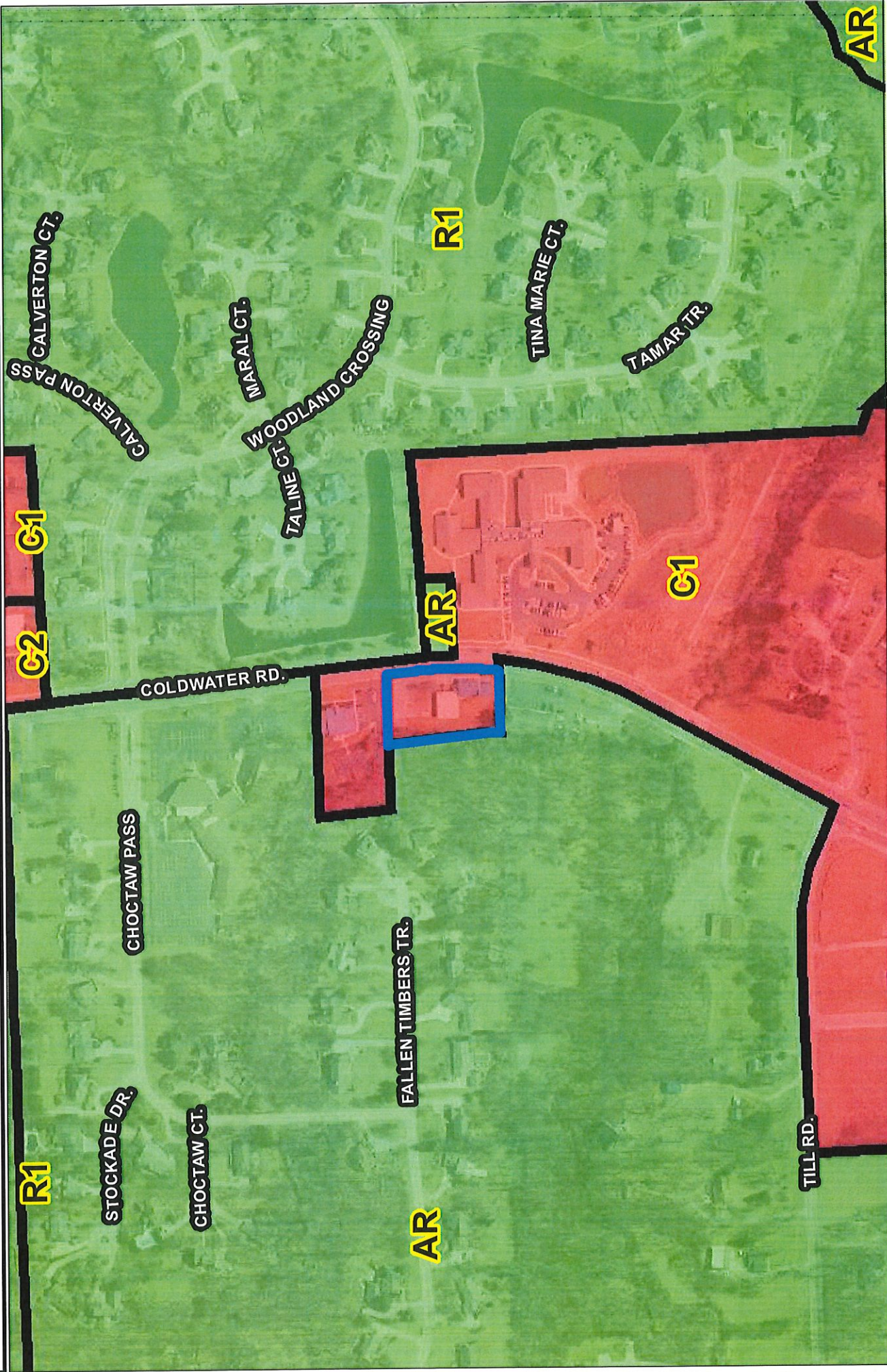
© 2004 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane Coordinate System, Zone 14N, East
 Photo and Color by Spring 2009
 Date: 2/11/2021

1 inch = 300 feet

0 250 500 Feet

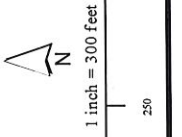
N

Rezoning Petition REZ-2021-0003 (9915 Coldwater Rd)



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 State Plane Coordinate System, Zone 14N, East
 Photo's of County of Allen, Spring 2009
 Date: 2/11/2021



Department of Planning Services Rezoning Petition Application

Applicant
 Applicant Zac Coleman
 Address 13235 Leo Rd
 City Leo State IN Zip 46765
 Telephone 2604665570 E-mail zac@colemansfw.com

Contact Person
 Contact Person Zac Coleman
 Address 13235 Leo Rd
 City Leo State IN Zip 46765
 Telephone 2604665570 E-mail zac@colemansfw.com

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

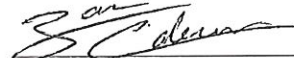
Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
 Address of the property 9915 Coldwater Rd
 Present Zoning C1 Proposed Zoning C2 Acreage to be rezoned 1 acre
 Proposed density _____ units per acre
 Township name washington Township section # 1
 Purpose of rezoning (attach additional page if necessary) See attached
 Sewer provider city Water provider city

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

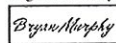
I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures 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.

Zac Coleman
 (printed name of applicant)


 (signature of applicant)

1/11/2021
 (date)

Bryan Murphy
 (printed name of property owner)


 (signature of property owner)

01/11/2021
 (date)

N/A
 (printed name of property owner)

(signature of property owner)

(date)

N/A
 (printed name of property owner)

(signature of property owner)

(date)

Received	Receipt No.	Hearing Date	Petition No.
<u>2/1/2021</u>	<u>136060</u>	<u>3-8-2021</u>	<u>REZ-2021-0003</u>

THE PURPOSE OF REZONING

The purpose of this rezoning appeal is to make it possible for a retail floor covering store to operate out of this building (9915 Coldwater Rd). A retail flooring covering store falls under the C2 category according to the Allen County zoning ordinance. I have made an offer to purchase this building from the property owner, contingent on the zoning change to C2.

[illegible]

FACT SHEET

Case #REZ-2021-0003		Bill # Z-21-02-11	Project Start: February 2021
APPLICANT:	Bryan Murphy c/o Zac Coleman		
REQUEST:	To rezone property from C1/Professional Office and Personal Services to C2/Limited Commercial to permit a retail floor covering facility.		
LOCATION:	The address of the subject property is 9915 Coldwater Road (Section 1 of Washington Township).		
LAND AREA:	Approximately 1 acre		
PRESENT ZONING:	C1/Professional Office and Personal Services		
PROPOSED ZONING:	C2/Limited Commercial		
COUNCIL DISTRICT:	2-Russ Jehl		
ASSOCIATED PROJECT:	none		
SPONSOR:	City of Fort Wayne Plan Commission		

March 8, 2021 Public Hearing

- No one from the public spoke at the public hearing.
- Ryan Neumeister, Justin Shurley and Rachel Tobin-Smith were absent.

March 15, 2021 Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

A motion was made by Patrick Zaharako and seconded by Don Schmidt to return the ordinance with a Do Pass recommendation with a Written Commitment to Common Council for their final decision.

6-0 MOTION PASSED

- Ryan Neumeister, Paul Sauerteig, and Rachel Tobin-Smith were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
April 5, 2021

PROJECT SUMMARY

SITE HISTORY:

- The structure was built on the site in 1980 according to the property record card.
- Between 1999 and 2003, a warehouse-style addition was added to the north end of the building.
- The County mapping system shows floodplain on the east side of the parcel.

STAFF DISCUSSION:

The original petitioner, Zac Coleman, requested to rezone from C1/Professional Office and Personal Service to C2/Limited Commercial to permit a floor covering facility. Mr. Coleman was planning to purchase the property from Bryan Murphy. Through the process Mr. Coleman decided not to purchase the property, but Mr. Murphy continues on as the property owner and applicant for the rezoning. During this process it was discovered that the existing use of industrial supply sales is not permitted in the existing zoning of C1/Professional Office and Personal Services. The rezoning to C2 will bring all existing uses into compliance, whether he sells the property or not.

The building was constructed in 1980 and now has a warehouse addition to the north side of the parcel. This building meets many of today's zoning ordinance standards for the C2 district; the size of the building is under 22,000 square feet, and only one building sits on the parcel. The applicant did not articulate any desire to expand the footprint of the existing building. The C2 zoning, with a Written Commitment, will be compatible with the existing uses along the Coldwater Road corridor. The commitment restricts more intensive commercial uses, especially with higher traffic patterns or potential for outdoor storage.

Staff did not receive any neighborhood correspondence.

PUBLIC HEARING SUMMARY:

Presenter: Adam Paul, realtor representing Mr. Coleman and Mr. Murphy, presented the proposal as outlined above. He stated that the applicant was willing to offer a Written Commitment to restrict some uses in the C2 district.

Public Comments:

None

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

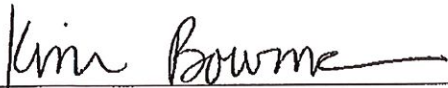
Rezoning Petition REZ-2021-0003

APPLICANT:	Bryan Murphy c/o Zac Coleman
REQUEST:	To rezone property from C1 to C2 to permit existing uses.
LOCATION:	The site is located on the west side of Coldwater Road. The site adjoins commercial uses to the north and south, while the west is bound by the Fallen Timbers subdivision. The address of the subject property is 9915 Coldwater Road (Section 1 of Washington Township).
LAND AREA:	Approximately 1 acre.
PRESENT ZONING:	C1/ Professional Office and Personal Services
PROPOSED ZONING:	C2/ Limited Commercial

The Site Committee recommends that Rezoning Petition REZ-2021-0003, be returned to Council with a "Do Pass" recommendation with a Written Commitment 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 site satisfies many of the Comprehensive Plan's goals and objectives, including being within the conceptual development area (LU2) and being in an area already served by infrastructure (LU3).
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 applicant has no plans to expand footprint of the current operation. Further development of the parcel may be thwarted by existing floodplain and elevation change on the parcel.
3. Approval is consistent with the preservation of property values in the area. No substantial evidence was provided that the rezone will depreciate surrounding property values. The applicant committed to executing a written commitment, which is intended to mitigate potentially detrimental development in the future.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. The site currently utilizes existing infrastructure, including city utilities and transportation.

These findings approved by the Fort Wayne Plan Commission on March 15, 2021.



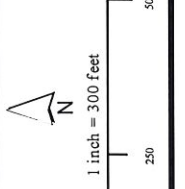
Kimberly R. Bowman, AICP
Executive Director
Secretary to the Commission

Rezoning Petition REZ-2021-0003 (9915 Coldwater Rd)



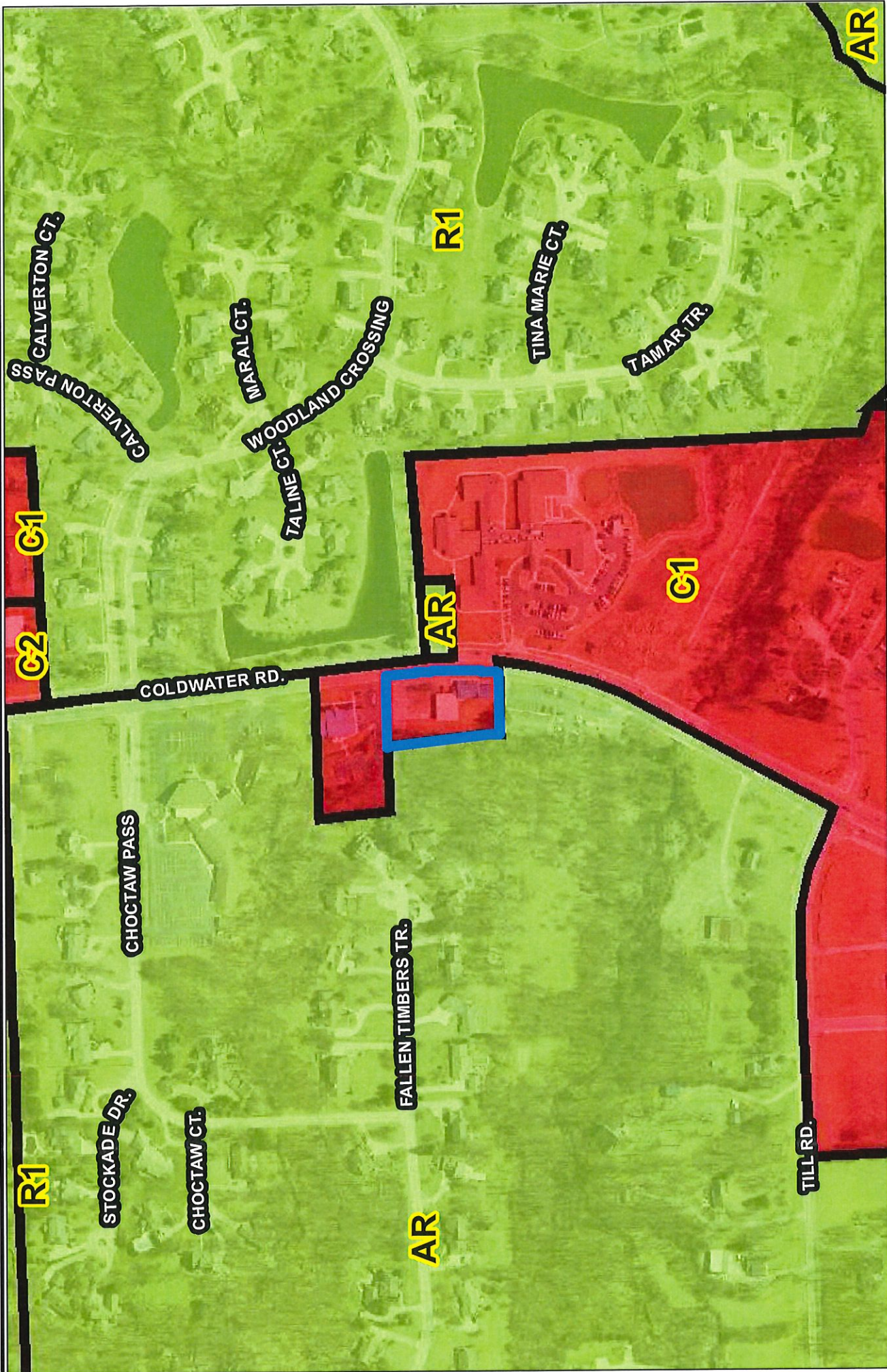
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State Plane Coordinate System, Indiana East
Photos and Contours Spring 2009
Date: 2/11/2021



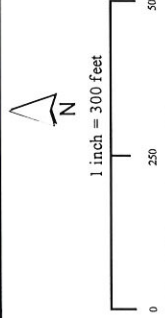


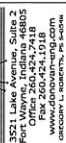
Rezoning Petition REZ-2021-0003 (9915 Coldwater Rd)



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Photos and Contours: Spring 2009
Date: 2/11/2021



[illegible]

PLAT OF SURVEY
9915 COLDWATER ROAD
FORT WAYNE, INDIANA 46825
MURPHY

[illegible]

DRAWN BY: KWH
CHECKED BY: KWH/OLR
DATE: 2-01-21

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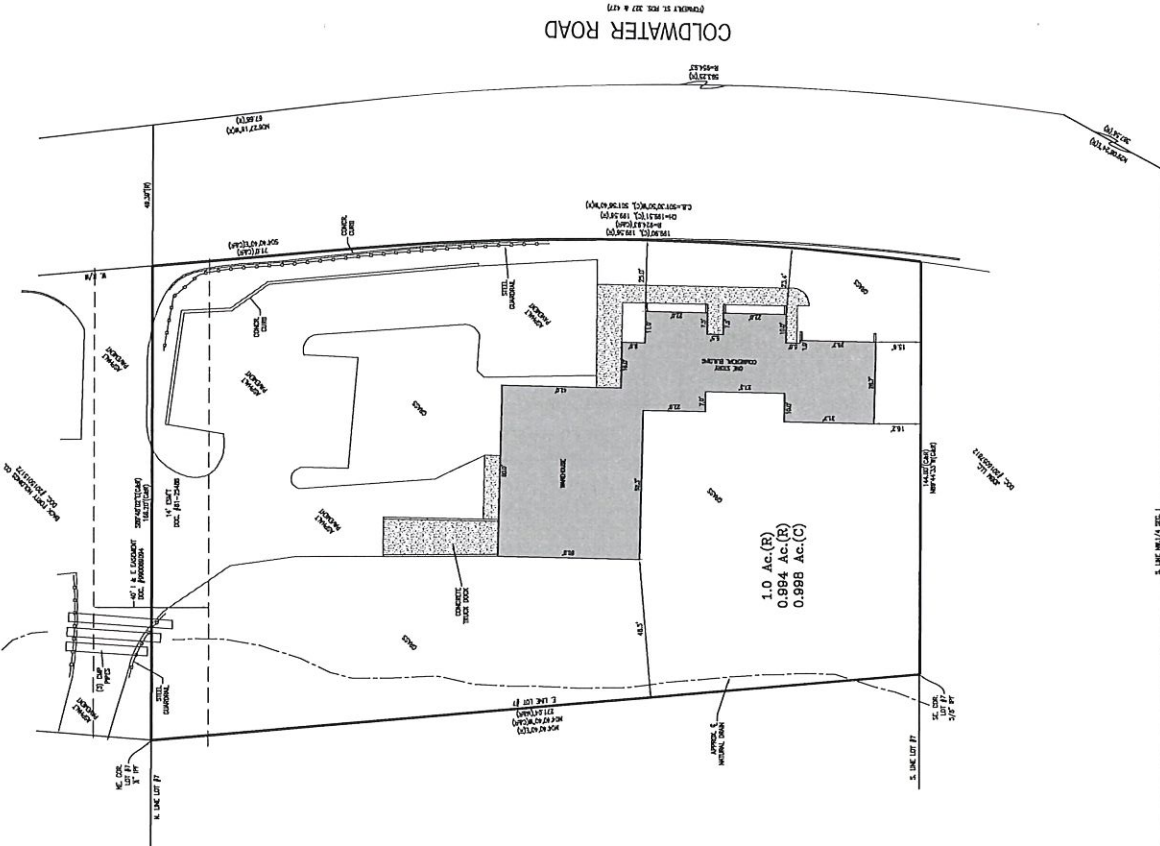
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DOCUMENT NO. 920063091

[illegible]

1. Number of the first title

The field work was completed on January 29, 2021.



Iron Pin (Rebar) Found

- | REV | PIPE FOUND | DATE |
|-----|---|------|
| REV | Reinforced Spike Found at (3) Set | |
| PKF | P.K. Not Found at (3) Set | |
| MSF | MS Not Found at (3) Set | |
| SPS | 5/8" rebar not V/cz stamped "Q2 1906 10000" | |
| R/W | Right-Of-Way Line | |
| E | Center Line | |
| (4) | Measured | |
| (5) | Reinforced | |
| (6) | Pithead | |
| (7) | Calculated | |
| (8) | CONCRETE INCIDENT | |

All monuments are at grade except as noted.



1"=20'

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Department of Planning Services Rezoning Petition Application

Applicant
 Applicant Zac Coleman
 Address 13235 Leo Rd
 City Leo State IN Zip 46765
 Telephone 2604665570 E-mail zac@colemansfw.com

Contact Person
 Contact Person Zac Coleman
 Address 13235 Leo Rd
 City Leo State IN Zip 46765
 Telephone 2604665570 E-mail zac@colemansfw.com

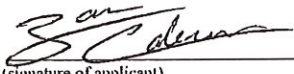
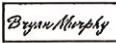
All staff correspondence will be sent only to the designated contact person.

Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
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 Present Zoning C1 Proposed Zoning C2 Acreage to be rezoned 1 acre
 Proposed density _____ units per acre
 Township name washington Township section # 1
 Purpose of rezoning (attach additional page if necessary) See attached
 Sewer provider city Water provider city

Filing Requirements
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- ☐ 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.

<u>Zac Coleman</u> (printed name of applicant)	 (signature of applicant)	<u>1/11/2021</u> (date)
<u>Bryan Murphy</u> (printed name of property owner)	 (signature of property owner)	<u>01/11/2021</u> (date)
<u>N/A</u> (printed name of property owner)	_____ (signature of property owner)	_____ (date)
<u>N/A</u> (printed name of property owner)	_____ (signature of property owner)	_____ (date)

Received <u>2/1/2021</u>	Receipt No. <u>136060</u>	Hearing Date <u>3-8-2021</u>	Petition No. <u>REZ-2021-0003</u>
-----------------------------	------------------------------	---------------------------------	--------------------------------------

Tax ID. _____

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (this "Commitment") is made this ____ day of _____, by _____ ("Declarant" or "Applicant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate located in _____ Township, Allen County, Indiana, the legal description of which is attached hereto as **Exhibit "A"**, more commonly referred to _____ (the "Real Estate"); and

WHEREAS, Applicant filed a _____ Application on _____ (DATE) which, is hereinafter referred to as the "Application", which Application has been approved by the _____ Plan Commission (the "Plan Commission") and the _____ (legislative body) and

WHEREAS, pursuant to the Application, the Real Estate has been rezoned "_____" pursuant to the _____ Zoning Ordinance effective as of _____ (Date) (the "Ordinance"); and

WHEREAS, Declarant has submitted this Commitment, voluntarily, pursuant to the Ordinance and I.C. 36-7-4-1015 for the purpose of limiting certain off site impacts and certain permitted uses arising from the development of the Real Estate; and

WHEREAS, in conjunction with the Application, the Plan Commission has accepted the Declarant's offer of this Commitment and its recordation with the Allen County, Indiana, Recorder's Office upon the Plan Commission's and the _____ (legislative body) approval of the Application.

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 any portion of the Real Estate.

1. **Use Limitations.** The following specific uses, which are otherwise allowed in the C2/ Limited Commercial zoning district, shall be prohibited upon the real estate:
 - a. Automatic teller machine
 - b. Automobile accessory store
 - c. Automobile rental (indoor)

- d. Automobile sales (indoor)
- e. Bakery Goods
- f. Bank
- g. Bar or tavern
- h. Billiard or pool hall
- i. Bingo establishment
- j. Bowling alley
- k. Brewery
- l. Campus housing
- m. Cigarette/tobacco/cigar store
- n. Coffee Shop
- o. Confectionary/candy/ice cream store
- p. Convenience store
- q. Correctional services facility
- r. Dormitory
- s. Driving instruction
- t. Entertainment facility
- u. Fireworks Sales
- v. Homeless/Emergency Shelter
- w. Hotel
- x. Laundromat
- y. Motel
- z. Package liquor store
- aa. Parking area
- bb. Parking structure
- cc. Pet store
- dd. Public transportation facility
- ee. Reception hall/banquet hall
- ff. Recreation facility
- gg. Rental and/or leasing store
- hh. Residential facility for homeless individuals
- ii. Restaurant, including drive-through
- jj. Skating rink
- kk. Swimming pool/hot tub sales
- ll. Taxi Service
- mm. Zoo

2. **Successors and Assigns.** This Commitment and the restrictions and limitations set forth herein shall be binding upon Declarant, and its successors and assigns, and shall also inure to the benefit of the Zoning Administrator of Allen County (the "Zoning Administrator") and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate. 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, and shall have an initial term of twenty-five (25) years, with successive terms of ten (10) years each unless terminated pursuant to the provisions of Section 8 below.

3. **Enforcement.** Any violation of this Commitment shall be deemed a violation of the Ordinance. Pursuant to I.C. 36-7-4-1015, the Plan Commission, or any enforcement official designated by the Ordinance, shall be entitled to enforce this Commitment, at law or in equity, in the event of any breach of the obligations contained herein; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel the enforcement of this Commitment by the Plan Commission or any enforcement official designated by the Ordinance, or any successor agency having zoning jurisdiction over the Real Estate. The Plan Commission, or any enforcement official designated by the Ordinance, shall have the remedies provided for in the Ordinance, or the ordinance covering 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.

4. **Modification and Termination.** This Commitment may be amended or terminated upon application by any persons who own the Real Estate, or any portion thereof, and only with the prior written consent of the Plan Commission, following a public hearing to consider said amendment or termination. Written notice of the public hearing shall be given by the applicant for said amendment or termination to the highest ranking officer of Windsor Woods Association, Inc. (the "Neighborhood Association"), with said notice being based on the then available records of the Indiana Secretary of State and being mailed no later than the date application is made to the Plan Commission for said amendment or termination. This Commitment shall not be amended or terminated unless, after the public hearing, the Plan Commission makes the following determinations as part of its consent: (i) implementation of the amendment or termination will not be injurious to the public health, safety and general welfare of the owners of real property in the Neighborhood Association and (ii) the use and value of the real property adjacent to the Real Estate will not be affected in a substantially adverse manner by implementation of the amendment or termination.

5. **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 in the Neighborhood Association, the Zoning Administrator of the City of Fort Wayne and the Plan Commission. As a condition precedent to the bringing of any lawsuit or initiating any action for temporary, preliminary and permanent injunctive relief as provided herein, the party desiring to bring said action shall first provide Declarant, or the then existing owner(s) of the Real Estate, thirty (30) days prior written notice of the breach or violation, or threatened breach or violation, of the terms, restrictions or covenants of this Commitment.

6. **Acknowledgment and Effect.** Declarant acknowledges that this Commitment is the product of a negotiation between the Applicant and the Neighborhood Association. The Neighborhood Association agreed not to remonstrate against the Application **only** because the Neighborhood Association deemed this Commitment to be acceptable in terms of the restrictions imposed upon the Real Estate.

7. **Effective Date.** This Commitment shall be effective upon being duly recorded in the Office of the Recorder of Allen County, Indiana.

8. **Statutory Authority.** This Commitment is made by Declarant pursuant to I.C. 36-7-4-1015.

9. **Governing Law.** This Commitment, including the restrictions and covenants contained herein, shall be governed by the laws of the State of Indiana.

10. **Permits.** No permits shall be issued under the City of Fort Wayne 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGE FOLLOWS]

DRAFT

IN WITNESS WHEREOF, _____ hereby agrees to all of the restrictions and covenants of this Commitment as set forth above.

DECLARANT/APPLICANT:

Date: _____

STATE OF INDIANA)

) SS:

COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this _____ day of _____, _____, personally appeared _____, and acknowledged on behalf of _____, as a Member thereof, the execution of the foregoing Written Commitment.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

_____, Notary Public
A resident of _____ County

Before me, _____ [identify the type of notarial officer], this _____ day of _____, 20____, _____ [name of grantor or other signer] acknowledged the execution of the foregoing or attached _____ [identify deed, mortgage or other instrument] as _____ [his or her] voluntary act for the purposes stated therein. [Signature and printed name of notary public or other notarial officer and official seal, if any]

EXECUTED AND DELIVERED in my presence: _____

[Witness's Signature]

Witness: _____

[Witness's Printed Name]

STATE OF INDIANA)

) SS:

COUNTY OF ____)

Before me, a Notary Public in and for said County and State, personally appeared _____ [Witness's Name], being known to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by _____ [Grantor's or other Signer's Name] in the above-named subscribing witness's presence, and that the abovenamed subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this _____ day of _____, 2020.

[Notary Public's Signature] _____

[Notary Public's' Printed Name]

[Include Notary Public's commission number, seal, commission county of residence or employment, and commission expiration date.]

This instrument prepared by _____

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. _____

Return to:

EXHIBIT A

DRAFT

FACT SHEET

Case #REZ-2021-0003		Bill # Z-21-02-11	Project Start: February 2021
APPLICANT:	Bryan Murphy c/o Zac Coleman		
REQUEST:	To rezone property from C1/Professional Office and Personal Services to C2/Limited Commercial to permit a retail floor covering facility.		
LOCATION:	The address of the subject property is 9915 Coldwater Road (Section 1 of Washington Township).		
LAND AREA:	Approximately 1 acre		
PRESENT ZONING:	C1/Professional Office and Personal Services		
PROPOSED ZONING:	C2/Limited Commercial		
COUNCIL DISTRICT:	2-Russ Jehl		
ASSOCIATED PROJECT:	none		
SPONSOR:	City of Fort Wayne Plan Commission		

March 8, 2021 Public Hearing

- No one from the public spoke at the public hearing.
- Ryan Neumeister, Justin Shurley and Rachel Tobin-Smith were absent.

March 15, 2021 Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

A motion was made by Patrick Zaharako and seconded by Don Schmidt to return the ordinance with a Do Pass recommendation with a Written Commitment to Common Council for their final decision.

6-0 MOTION PASSED

- Ryan Neumeister, Paul Sauerteig, and Rachel Tobin-Smith were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
April 5, 2021

PROJECT SUMMARY

SITE HISTORY:

- The structure was built on the site in 1980 according to the property record card.
- Between 1999 and 2003, a warehouse-style addition was added to the north end of the building.
- The County mapping system shows floodplain on the east side of the parcel.

STAFF DISCUSSION:

The original petitioner, Zac Coleman, requested to rezone from C1/Professional Office and Personal Service to C2/Limited Commercial to permit a floor covering facility. Mr. Coleman was planning to purchase the property from Bryan Murphy. Through the process Mr. Coleman decided not to purchase the property, but Mr. Murphy continues on as the property owner and applicant for the rezoning. During this process it was discovered that the existing use of industrial supply sales is not permitted in the existing zoning of C1/Professional Office and Personal Services. The rezoning to C2 will bring all existing uses into compliance, whether he sells the property or not.

The building was constructed in 1980 and now has a warehouse addition to the north side of the parcel. This building meets many of today's zoning ordinance standards for the C2 district; the size of the building is under 22,000 square feet, and only one building sits on the parcel. The applicant did not articulate any desire to expand the footprint of the existing building. The C2 zoning, with a Written Commitment, will be compatible with the existing uses along the Coldwater Road corridor. The commitment restricts more intensive commercial uses, especially with higher traffic patterns or potential for outdoor storage.

Staff did not receive any neighborhood correspondence.

PUBLIC HEARING SUMMARY:

Presenter: Adam Paul, realtor representing Mr. Coleman and Mr. Murphy, presented the proposal as outlined above. He stated that the applicant was willing to offer a Written Commitment to restrict some uses in the C2 district.

Public Comments:

None

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition REZ-2021-0003

APPLICANT:	Bryan Murphy c/o Zac Coleman
REQUEST:	To rezone property from C1 to C2 to permit existing uses.
LOCATION:	The site is located on the west side of Coldwater Road. The site adjoins commercial uses to the north and south, while the west is bound by the Fallen Timbers subdivision. The address of the subject property is 9915 Coldwater Road (Section 1 of Washington Township).
LAND AREA:	Approximately 1 acre.
PRESENT ZONING:	C1/ Professional Office and Personal Services
PROPOSED ZONING:	C2/ Limited Commercial

The Site Committee recommends that Rezoning Petition REZ-2021-0003, be returned to Council with a "Do Pass" recommendation with a Written Commitment after considering the following:

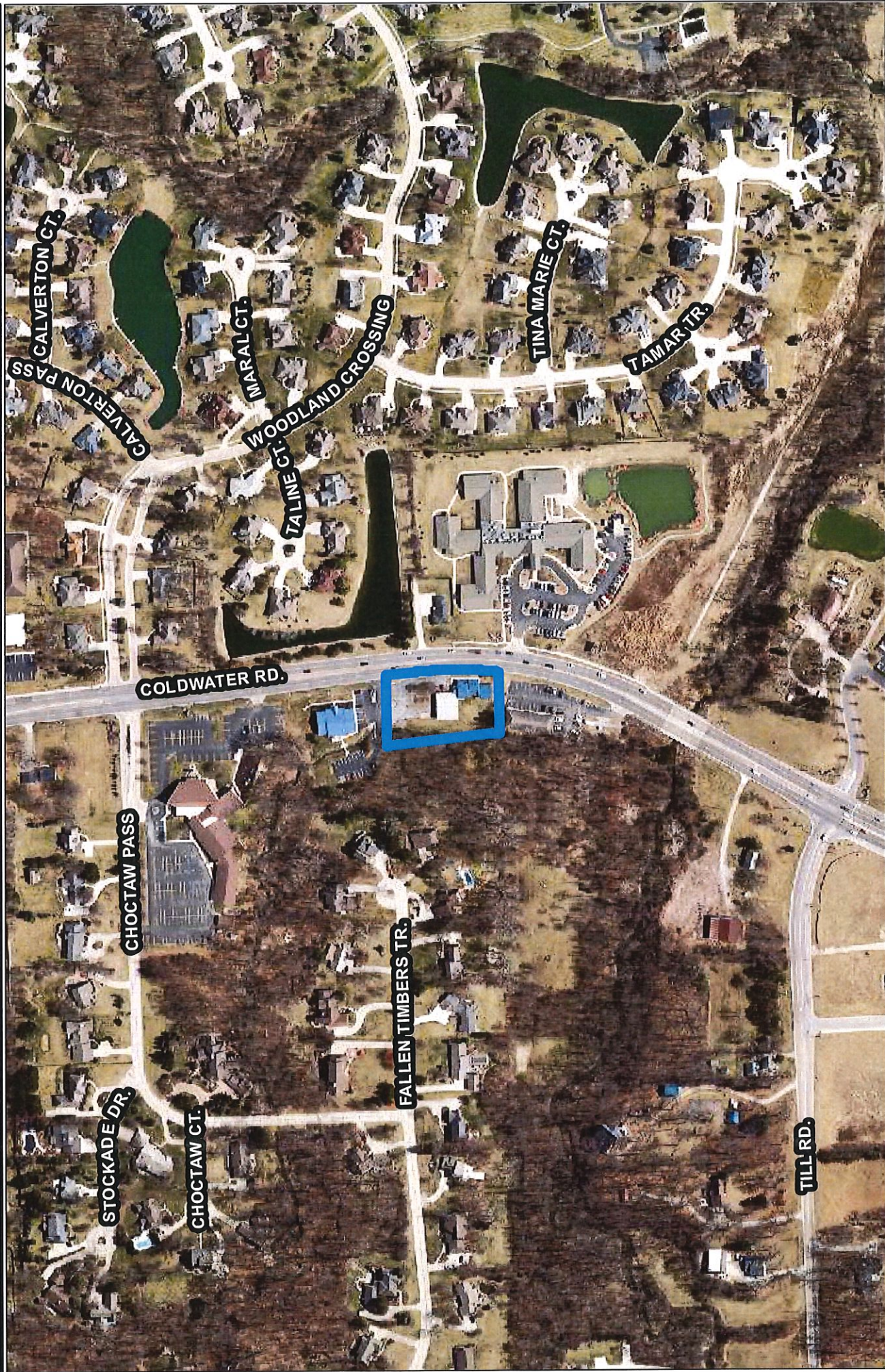
1. Approval of the rezoning request will be in substantial compliance with City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The site satisfies many of the Comprehensive Plan's goals and objectives, including being within the conceptual development area (LU2) and being in an area already served by infrastructure (LU3).
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 applicant has no plans to expand footprint of the current operation. Further development of the parcel may be thwarted by existing floodplain and elevation change on the parcel.
3. Approval is consistent with the preservation of property values in the area. No substantial evidence was provided that the rezone will depreciate surrounding property values. The applicant committed to executing a written commitment, which is intended to mitigate potentially detrimental development in the future.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. The site currently utilizes existing infrastructure, including city utilities and transportation.

These findings approved by the Fort Wayne Plan Commission on March 15, 2021.



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

Rezoning Petition REZ-2021-0003 (9915 Coldwater Rd)

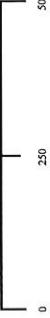


Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

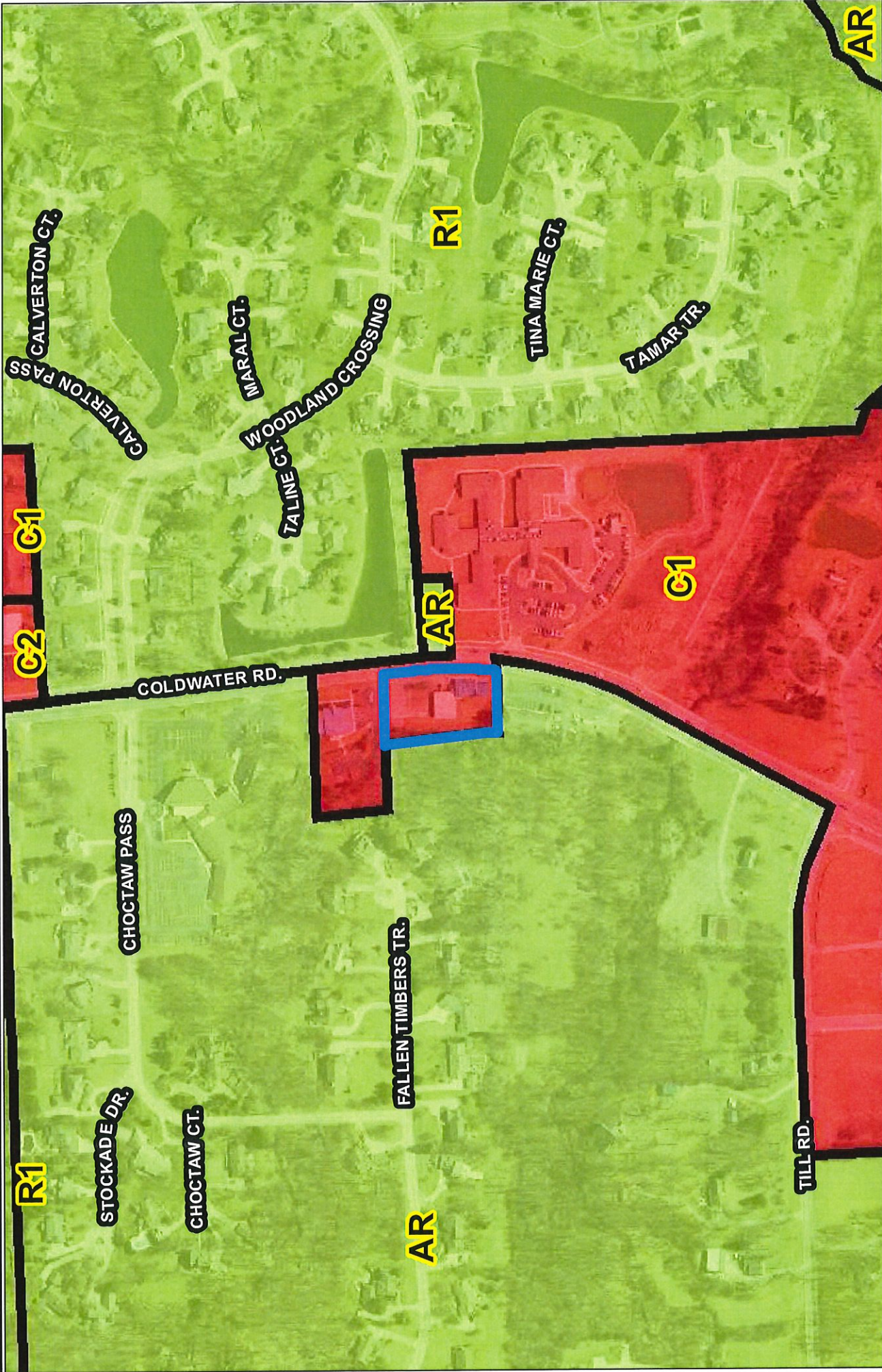
© 2004 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2009
 Date: 2/17/2021



1 inch = 300 feet

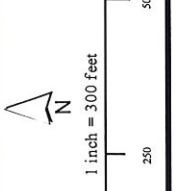


Rezoning Petition REZ-2021-0003 (9915 Coldwater Rd)



Although strict accuracy standards have been followed in the preparation of this map, the 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.

© 2004 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours Spring 2009
 Date: 2/11/2021





Department of Planning Services Rezoning Petition Application

Applicant
Applicant Zac Coleman
Address 13235 Leo Rd
City Leo State IN Zip 46765
Telephone 2604665570 E-mail zac@colemansfw.com

Contact Person
Contact Person Zac Coleman
Address 13235 Leo Rd
City Leo State IN Zip 46765
Telephone 2604665570 E-mail zac@colemansfw.com

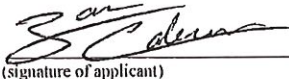
All staff correspondence will be sent only to the designated contact person.

Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 9915 Coldwater Rd
Present Zoning C1 Proposed Zoning C2 Acreage to be rezoned 1 acre
Proposed density _____ units per acre
Township name washington Township section # 1
Purpose of rezoning (attach additional page if necessary) See attached
Sewer provider city Water provider city

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.

<u>Zac Coleman</u> (printed name of applicant)	 (signature of applicant)	<u>1/11/2021</u> (date)
<u>Bryan Murphy</u> (printed name of property owner)	 (signature of property owner)	<u>01/11/2021</u> (date)
<u>N/A</u> (printed name of property owner)	_____ (signature of property owner)	_____ (date)
<u>N/A</u> (printed name of property owner)	_____ (signature of property owner)	_____ (date)

Received <u>2/1/2021</u>	Receipt No. <u>136060</u>	Hearing Date <u>3-8-2021</u>	Petition No. <u>REZ-2021-0003</u>
-----------------------------	------------------------------	---------------------------------	--------------------------------------

Tax ID. _____

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (this "Commitment") is made this ____ day of _____, by _____ ("Declarant" or "Applicant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate located in _____ Township, Allen County, Indiana, the legal description of which is attached hereto as **Exhibit "A"**, more commonly referred to _____ (the "Real Estate"); and

WHEREAS, Applicant filed a _____ Application on _____ (DATE) which, is hereinafter referred to as the "Application", which Application has been approved by the _____ Plan Commission (the "Plan Commission") and the _____ (legislative body) and

WHEREAS, pursuant to the Application, the Real Estate has been rezoned "_____" pursuant to the _____ Zoning Ordinance effective as of _____ (Date) (the "Ordinance"); and

WHEREAS, Declarant has submitted this Commitment, voluntarily, pursuant to the Ordinance and I.C. 36-7-4-1015 for the purpose of limiting certain off site impacts and certain permitted uses arising from the development of the Real Estate; and

WHEREAS, in conjunction with the Application, the Plan Commission has accepted the Declarant's offer of this Commitment and its recordation with the Allen County, Indiana, Recorder's Office upon the Plan Commission's and the _____ (legislative body) approval of the Application.

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 any portion of the Real Estate.

1. **Use Limitations.** The following specific uses, which are otherwise allowed in the C2/ Limited Commercial zoning district, shall be prohibited upon the real estate:
 - a. Automatic teller machine
 - b. Automobile accessory store
 - c. Automobile rental (indoor)

- d. Automobile sales (indoor)
- e. Bakery Goods
- f. Bank
- g. Bar or tavern
- h. Billiard or pool hall
- i. Bingo establishment
- j. Bowling alley
- k. Brewery
- l. Campus housing
- m. Cigarette/tobacco/cigar store
- n. Coffee Shop
- o. Confectionary/candy/ice cream store
- p. Convenience store
- q. Correctional services facility
- r. Dormitory
- s. Driving instruction
- t. Entertainment facility
- u. Fireworks Sales
- v. Homeless/Emergency Shelter
- w. Hotel
- x. Laundromat
- y. Motel
- z. Package liquor store
- aa. Parking area
- bb. Parking structure
- cc. Pet store
- dd. Public transportation facility
- ee. Reception hall/banquet hall
- ff. Recreation facility
- gg. Rental and/or leasing store
- hh. Residential facility for homeless individuals
- ii. Restaurant, including drive-through
- jj. Skating rink
- kk. Swimming pool/hot tub sales
- ll. Taxi Service
- mm. Zoo

2. **Successors and Assigns.** This Commitment and the restrictions and limitations set forth herein shall be binding upon Declarant, and its successors and assigns, and shall also inure to the benefit of the Zoning Administrator of Allen County (the "Zoning Administrator") and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate. 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, and shall have an initial term of twenty-five (25) years, with successive terms of ten (10) years each unless terminated pursuant to the provisions of Section 8 below.

3. **Enforcement.** Any violation of this Commitment shall be deemed a violation of the Ordinance. Pursuant to I.C. 36-7-4-1015, the Plan Commission, or any enforcement official designated by the Ordinance, shall be entitled to enforce this Commitment, at law or in equity, in the event of any breach of the obligations contained herein; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel the enforcement of this Commitment by the Plan Commission or any enforcement official designated by the Ordinance, or any successor agency having zoning jurisdiction over the Real Estate. The Plan Commission, or any enforcement official designated by the Ordinance, shall have the remedies provided for in the Ordinance, or the ordinance covering 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.

4. **Modification and Termination.** This Commitment may be amended or terminated upon application by any persons who own the Real Estate, or any portion thereof, and only with the prior written consent of the Plan Commission, following a public hearing to consider said amendment or termination. Written notice of the public hearing shall be given by the applicant for said amendment or termination to the highest ranking officer of Windsor Woods Association, Inc. (the "Neighborhood Association"), with said notice being based on the then available records of the Indiana Secretary of State and being mailed no later than the date application is made to the Plan Commission for said amendment or termination. This Commitment shall not be amended or terminated unless, after the public hearing, the Plan Commission makes the following determinations as part of its consent: (i) implementation of the amendment or termination will not be injurious to the public health, safety and general welfare of the owners of real property in the Neighborhood Association and (ii) the use and value of the real property adjacent to the Real Estate will not be affected in a substantially adverse manner by implementation of the amendment or termination.

5. **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 in the Neighborhood Association, the Zoning Administrator of the City of Fort Wayne and the Plan Commission. As a condition precedent to the bringing of any lawsuit or initiating any action for temporary, preliminary and permanent injunctive relief as provided herein, the party desiring to bring said action shall first provide Declarant, or the then existing owner(s) of the Real Estate, thirty (30) days prior written notice of the breach or violation, or threatened breach or violation, of the terms, restrictions or covenants of this Commitment.

6. **Acknowledgment and Effect.** Declarant acknowledges that this Commitment is the product of a negotiation between the Applicant and the Neighborhood Association. The Neighborhood Association agreed not to remonstrate against the Application **only** because the Neighborhood Association deemed this Commitment to be acceptable in terms of the restrictions imposed upon the Real Estate.

7. **Effective Date.** This Commitment shall be effective upon being duly recorded in the Office of the Recorder of Allen County, Indiana.

8. **Statutory Authority.** This Commitment is made by Declarant pursuant to I.C. 36-7-4-1015.

9. **Governing Law.** This Commitment, including the restrictions and covenants contained herein, shall be governed by the laws of the State of Indiana.

10. **Permits.** No permits shall be issued under the City of Fort Wayne 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGE FOLLOWS]

DRAFT

IN WITNESS WHEREOF, _____ hereby agrees to all of the restrictions and covenants of this Commitment as set forth above.

DECLARANT/APPLICANT:

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this _____ day of _____, _____, personally appeared _____, and acknowledged on behalf of _____, as a Member thereof, the execution of the foregoing Written Commitment.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

_____, Notary Public
A resident of _____ County

Before me, _____ [identify the type of notarial officer], this _____ day of _____, 20____, _____ [name of grantor or other signer] acknowledged the execution of the foregoing or attached _____ [identify deed, mortgage or other instrument] as _____ [his or her] voluntary act for the purposes stated therein. [Signature and printed name of notary public or other notarial officer and official seal, if any]

EXECUTED AND DELIVERED in my presence: _____

[Witness's Signature]

Witness: _____

[Witness's Printed Name]

STATE OF INDIANA)

) SS:

COUNTY OF ____)

Before me, a Notary Public in and for said County and State, personally appeared _____ [Witness's Name], being known to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by _____ [Grantor's or other Signer's Name] in the above-named subscribing witness's presence, and that the abovenamed subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this _____ day of _____, 2020.

[Notary Public's Signature] _____

[Notary Public's' Printed Name]

[Include Notary Public's commission number, seal, commission county of residence or employment, and commission expiration date.]

This instrument prepared by _____

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. _____

Return to:

EXHIBIT A

DRAFT