

#REZ-2020-0037

BILL NO. Z-20-10-32

ZONING MAP ORDINANCE NO. Z-_____

AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. U-42 (Sec. 16 of St. Joseph Township)

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA:

SECTION 1. That the area described as follows is hereby designated a C3 (General
Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
Wayne, Indiana:

A tract of land located in the Northeast Quarter of Section 16, Township 31 North,
Range 13 East, in Allen County, the State of Indiana, more fully described as
follows:

COMMENCING at a Rebar stake with cap (FIRM 0042) situated in the Northeast
corner of said Northeast Quarter; Thence South 03 Degrees 09 Minutes 27 Seconds
East (Indiana State Plane Coordinate System East Zone-GPS Grid Basis of
Bearings), a distance of 614.99 feet along the East line of said Northeast Quarter;
Thence South 86 Degrees 50 Minutes 33 Seconds West, a distance of 65.00 feet
along the North line extended of Parcel 1 as described in the conveyance to
Bastress Family Limited Partnership as recorded in Allen County Document No.
2008004763 to the Northeast corner thereof (also being in the West right-of-way line
of Maplecrest Road as described in the conveyance to the County of Allen, State of
Indiana as recorded in Allen County Document No. 95-056786), the **TRUE POINT
OF BEGINNING**; Thence South 86 Degrees 50 Minutes 33 Seconds West, a
distance of 220.00 feet along the North line of said Parcel 1 to the Northwest corner
thereof; Thence South 03 Degrees 09 Minutes 27 Seconds East, a distance of
200.00 feet along the West line of said Parcel 1 to the Southwest corner thereof;
Thence South 86 Degrees 50 Minutes 33 Seconds West, a distance of 193.71 feet
along the South line extended of said Parcel 1; Thence North 02 Degrees 44
Minutes 15 Seconds West, a distance of 395.48 feet along the East line of the tract
of land described in the conveyance to Maplecrest Shops, LLC in Allen County
Document No. 2016063045 to the Northeast corner thereof; Thence South 87
Degrees 15 Minutes 45 Seconds West, a distance of 241.20 feet along the North
line and the North line extended of said Maplecrest Shops tract; Thence North 48
Degrees 06 Minutes 16 Seconds West, a distance of 44.10 feet; Thence North 02
Degrees 56 Minutes 33 Seconds West, a distance of 338.67 feet along the East line
of the tract of land described in the conveyance to Midwest Green Lawn Care &
Landscaping LLC in Allen County Document No. 2020022903 to the Southwest
corner of the tract of land described in the conveyance to the City of Fort Wayne,

1 Indiana in Allen County Document No. 203126353; Thence North 87 Degrees 00
2 Minutes 18 Seconds East, a distance of 196.74 feet along the South line of said City
3 of Fort Wayne tract [being a line that is parallel with and Fifty (50) feet South of the
4 North line of said Northeast Quarter] to the Southeast corner thereof; Thence South
5 87 Degrees 17 Minutes 04 Seconds East, a distance of 201.00 feet along the South
6 line of the County of Allen tract referenced above; Thence North 87 Degrees 00
7 Minutes 18 Seconds East, a distance of 85.20 feet along the South line of said
8 County of Allen tract [being a line that is parallel with and Seventy (70) feet South of
9 the North line of said Northeast Quarter) to the Northwest corner of Parcel 3 in the
10 Bastress Family conveyance referenced above; Thence South 03 Degrees 09
11 Minutes 27 Seconds East, a distance of 220.00 feet along the West line of said
12 Parcel 3 to the Southwest corner thereof; Thence North 87 Degrees 00 Minutes 18
13 Seconds East, a distance of 200.00 feet along the South line of said Parcel 3 to the
14 Southeast corner thereof; Thence South 03 Degrees 09 Minutes 27 Seconds East,
15 a distance of 40.00 feet along the West line of the County of Allen tract referenced
16 above to the Northeast corner of Parcel 4 in the Bastress Family conveyance
17 referenced above; Thence South 87 Degrees 00 Minutes 18 Seconds West, a
18 distance of 125.00 feet along the North line of said Parcel 4 to the Northwest corner
19 thereof; Thence South 03 Degrees 09 Minutes 27 Seconds East, a distance of
20 175.00 feet along the West line of said Parcel 4 to the Southwest corner thereof;
21 Thence North 87 Degrees 00 Minutes 18 Seconds East, a distance of 125.00 feet
22 along the South line of said Parcel 4 to the Southeast corner thereof; Thence South
23 03 Degrees 09 Minutes 27 Seconds East, a distance of 110.18 feet along the West
24 line of the County of Allen tract referenced above to the **POINT OF BEGINNING**,
25 said tract containing 6.835 Acres, more or less, and being subject to all public road
26 rights-of-way and to all easements of record.

27
28 and the symbols of the City of Fort Wayne Zoning Map No. U-42 (Sec. 16 of St. Joseph
29 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
30 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.

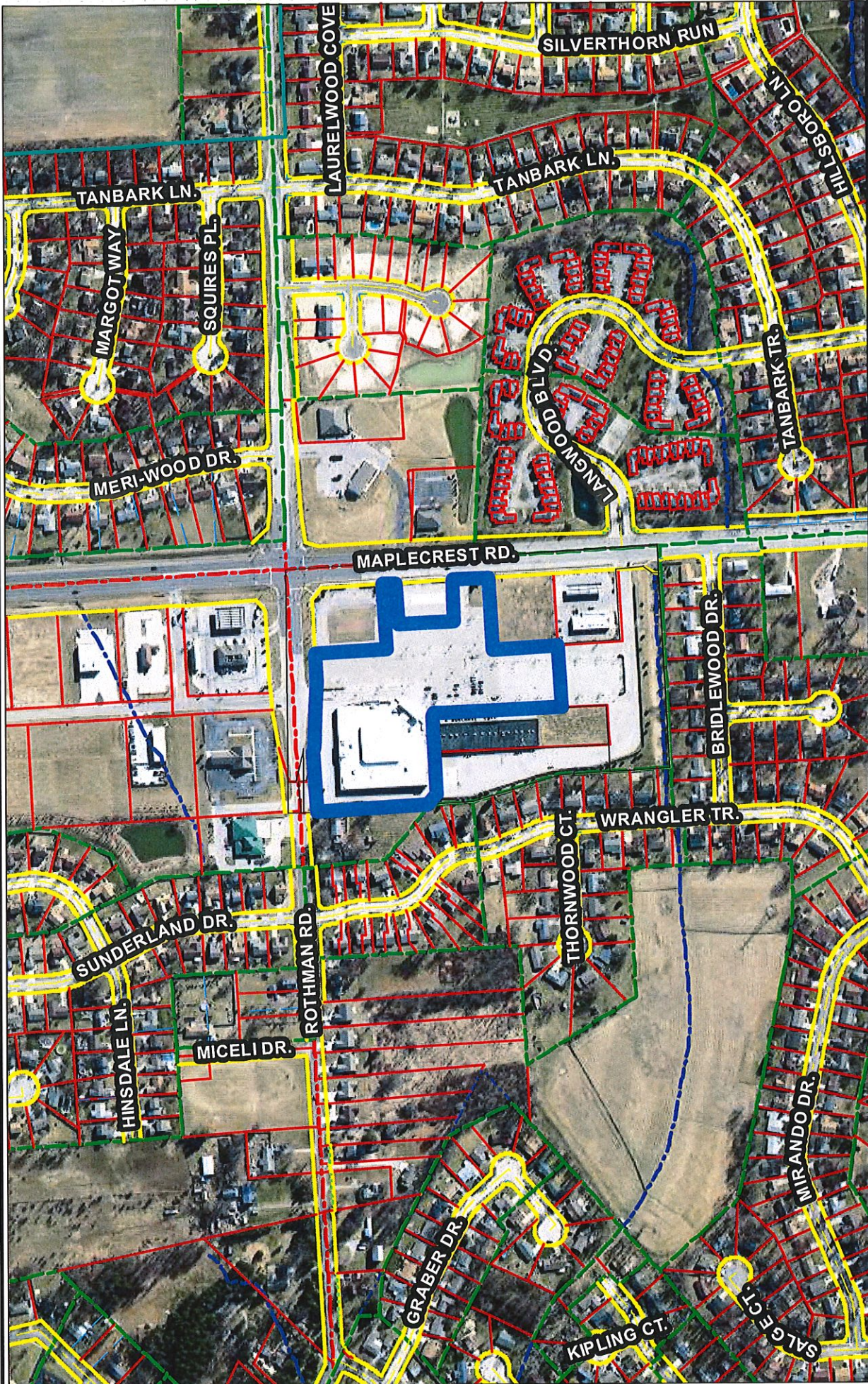
SECTION 3. That this Ordinance shall be in full force and effect from and after its
passage and approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY:



Carol T. Helton, City Attorney



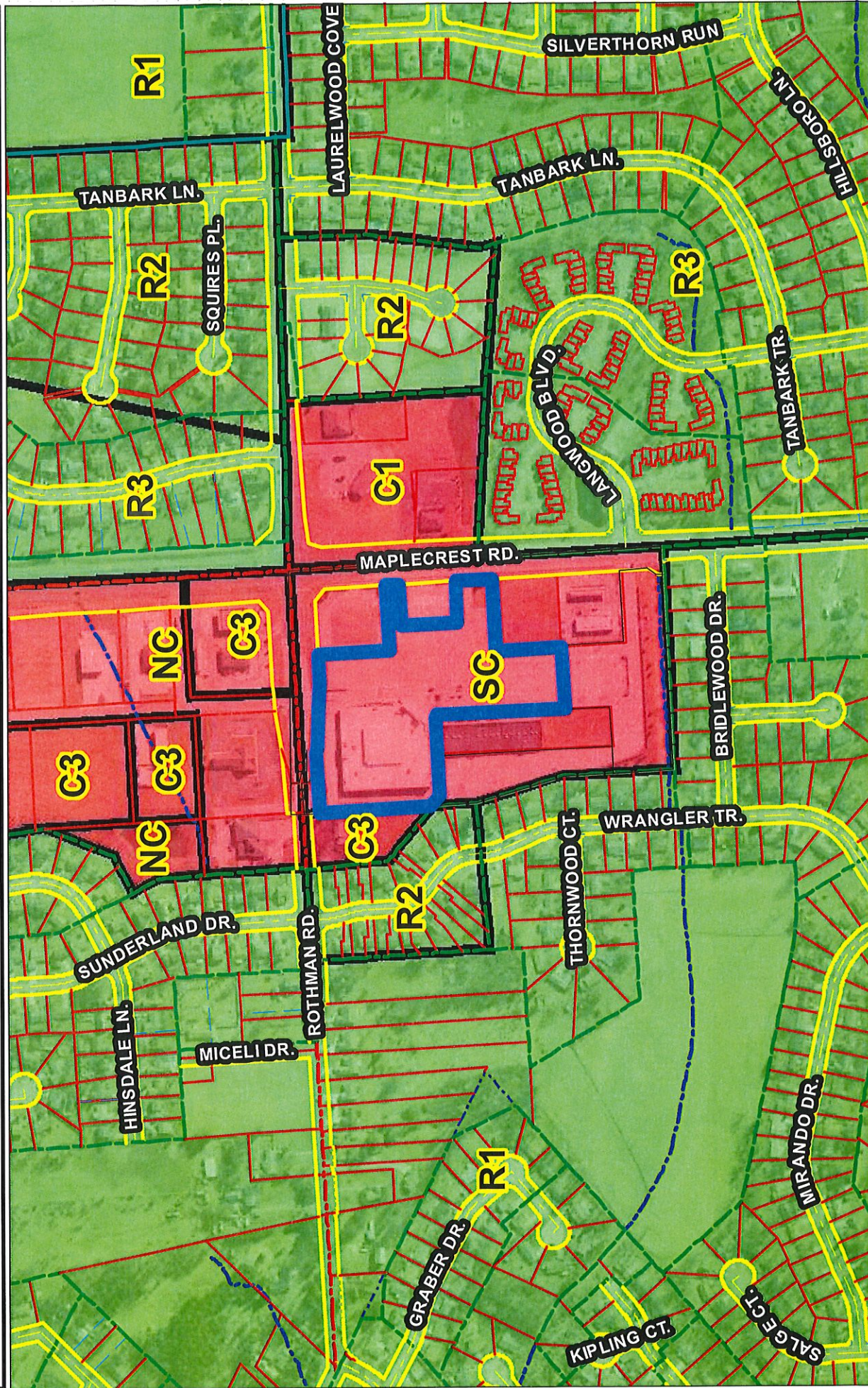
Although other accuracy standards have been applied in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

©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: 10/19/2020



1 inch = 400 feet





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**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Poochickieburger, LLC
Address 1219 Oak Bay Run
City Fort Wayne State IN Zip 46825
Telephone _____ E-mail _____

Contact Person
Contact Person Robert C. Kruger, Esq.
Address 200 East Main Street, Ste. 1000
City Fort Wayne State IN Zip 46802
Telephone 260-426-1300 E-mail rkruger@burtblee.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 7301 Maplecrest Road
Present Zoning SC Proposed Zoning G3 Acreage to be rezoned 6.835
Proposed density _____ units per acre
Township name St Joe Township section # 16
Purpose of rezoning (attach additional page if necessary) To operate recreation center with
arcades, go-karts (electric), miniature golf, and other recreation uses
Sewer provider FW Water provider FW

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.

By: Rob Clevenger, Member
(printed name of applicant)

(signature of applicant)

10/5/20
(date)

By: Rob Clevenger, Member
(printed name of property owner)

(signature of property owner)

10/5/20
(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>10/05/20</u>	<u>135439</u>	<u>11-9-2020</u>	<u>REZ-2020-0037</u>

[illegible]

D.A.B.C.
D.A. Brown Engineering Consultants
5401 County Road 427, P.O. Box 359, Auburn, IN 46706
Phone: (260) 925 - 2020 Fax: (260) 925 - 1212
www.dabrownengineering.com

A tract of land located in the Northeast Quarter of Section 16, Township 31 North, Range 13 East, in Allen County, the State of Indiana, more fully described as follows:

[illegible]

This drawing is not intended to be represented as a Retracement or Original Boundary Survey, a Route Survey, or a Surveyor Location Report as defined in 865 IAC 1-12.



City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2020-0037
Bill Number: Z-20-10-32
Council District: 2-Russ Jehl

Introduction Date: October 27, 2020

Plan Commission
Public Hearing Date: November 9, 2020 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 6.8 acres from SC/Shopping Center to C3/General Commercial.

Location: 7301 Maplecrest Road

Reason for Request: To utilize an existing shopping center as a recreation center with arcades, indoor electric go-carts, mini-golf, and other indoor recreation uses.

Applicant: Poochickieburger, LLC

Property Owner: Rob Clevenger

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3/General Commercial zoning district, which will allow the currently vacant building to be repurposed as an indoor recreation center.

Effect of Non-Passage: The property will remain zoned commercial and may be redeveloped with uses permitted in the Shopping Center district.

FACT SHEET

Case #REZ-2020-0037		Bill # Z-20-10-32	Project Start: October 2020
APPLICANT:	Poochickieburger LLC		
REQUEST:	To rezone property from SC/Shopping Center to C3/General Commercial to allow for a recreation center with arcades, go-karts (electric), miniature golf, and other recreation uses.		
LOCATION:	The address of the subject property is 7301 Maplecrest Road, also utilized in the past as Marsh grocery (Section 16 of St. Joseph Township).		
LAND AREA:	Approximately 6.8 acres		
PRESENT ZONING:	SC/Shopping Center		
PROPOSED ZONING:	C3/General Commercial		
COUNCIL DISTRICT:	2-Russ Jehl		
ASSOCIATED PROJECT:	none		
SPONSOR:	City of Fort Wayne Plan Commission		

November 9, 2020 Public Hearing

- No one from the public spoke at the hearing.
- Paul Sauerteig and Justin Shurley were absent.

November 16, 2020 – Business Meeting

Plan Commission Recommendation: DO PASS w/ Written Commitment

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

7-0 MOTION PASSED

- Tom Freistroffer and Justin Shurley were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
November 30, 2020

PROJECT SUMMARY

SITE HISTORY:

- The commercial structure was constructed in 2003 for Marsh.
- Marsh vacated the structure in 2006.

STAFF DISCUSSION:

The petitioner requests a rezoning from SC/Shopping Center to C3/General Commercial to allow the structure to be reused for an entertainment facility including go-karts (electric), miniature golf, arcades and other recreation uses.

The project site is the former site of the Marsh grocery store which was constructed in 2003 and later vacated in 2006. The store has remained vacant since March vacated in 2006. The intent is to repurpose the existing building into an indoor recreation facility. The requested C3 zoning is necessary for the proposed use. In discussions with the applicant they agreed to supply a written commitment restricting some uses in the C3 district but continuing to allow more typical retail uses that the SC district would allow.

The proposed rezoning property is surrounded by commercial land uses. This property is located on the southwest side of Maplecrest and Rothman Road. The applicant does not intend to make changes to the property other than general maintenance and aesthetic improvements.

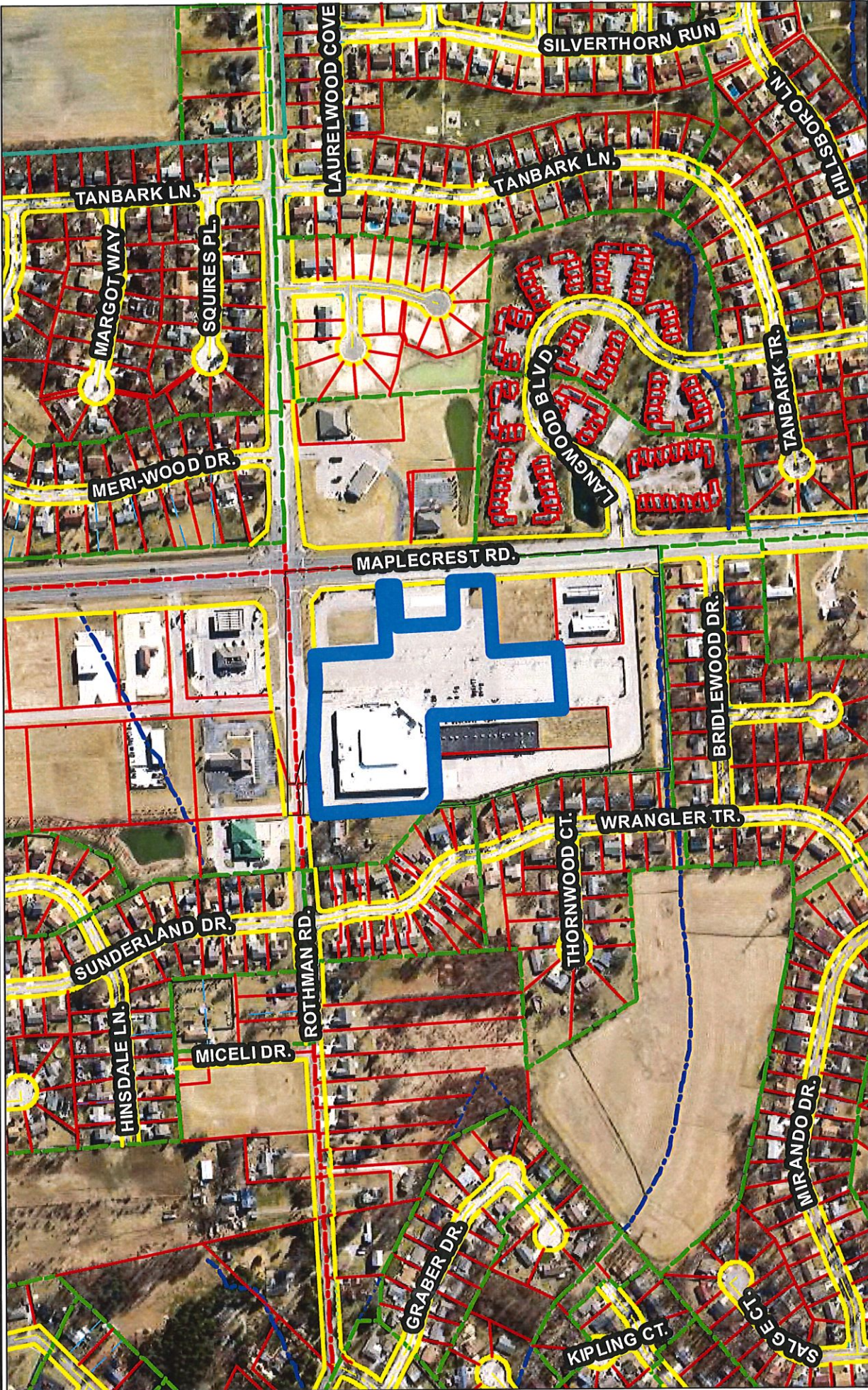
The Comprehensive Plan encourages a mixture of uses so long as they are compatible. The structure has been in place since 2003 as part of a shopping center. The property has ample parking for the intended use, so no burden should be placed on the use of the parking lot. The Comprehensive Plan also encourages reinvestment in existing properties, utilizing existing infrastructure and roadways.

PUBLIC HEARING SUMMARY:

Presenter: Rob Kruger, representing the applicant, presented the proposal as outlined above.

Public Comments:

none



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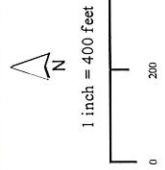
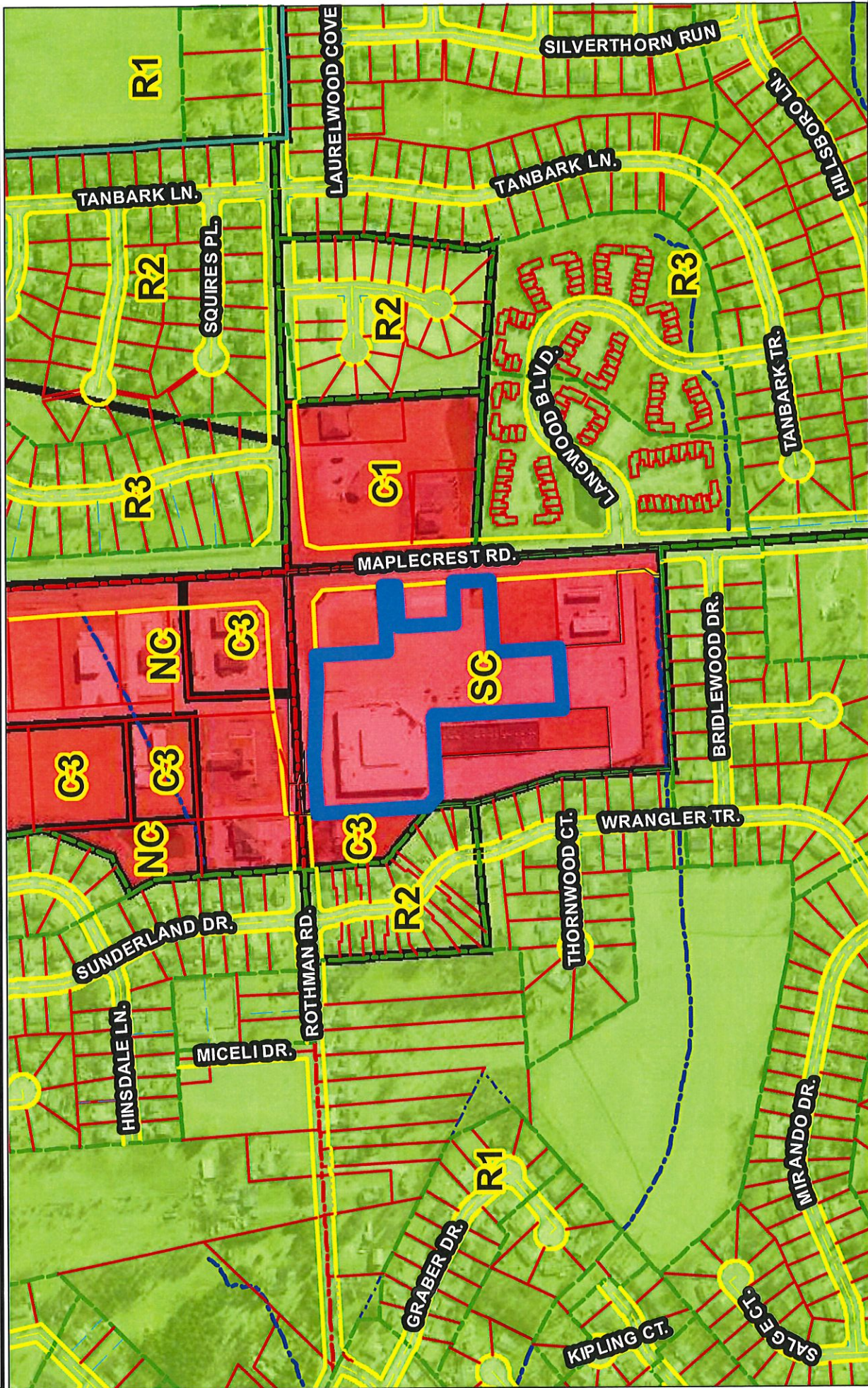


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Rezoning Petition REZ-2020-0037 (7301 Maplecrest)



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WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made by Poochickieburger, LLC (the "Declarant"), and is made effective as of the date of the approval of the Rezoning Petition.

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 6.8 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (the "Real Estate"); and

WHEREAS, Declarant has applied for rezoning approval with the Plan Commission, on the Real Estate, which Petition has been approved by the Plan Commission and City Council; and

WHEREAS, Declarant has offered this Commitment, voluntarily, pursuant to Indiana Code 36-7-4-1015, for the purpose of limiting certain uses for the Real Estate; and

WHEREAS, in conjunction with the Petition, the Plan Commission has accepted Declarant's offer of this Commitment and its recordation with the Allen County, Indiana, Recorder's Office upon Plan Commission's and City Council approval of the Petition.

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. Prohibited Uses. The following uses shall be prohibited upon the Real Estate as permitted in the C3/Limited Retail zoning district §157.216:
 - a. Agricultural equipment sales;
 - b. Agricultural equipment services;
 - c. Agricultural supply sales;
 - d. Automobile auction;
 - e. Automobile body shop;
 - f. Automobile detailing or trim shop;
 - g. Automobile rental (outdoor);
 - h. Automobile repair;
 - i. Automobile restoration;

- j. Automobile rustproofing;
- k. Automobile sales (outdoor);
- l. Club, private;
- m. Correctional services facility;
- n. Engine repair;
- o. Fraternity house;
- p. Group residential facility (small);
- q. Group residential facility (large);
- r. Homeless/emergency shelter;
- s. Manufactured home sales;
- t. Manufactured home, Type II;
- u. Pawn shop;
- v. Residential facility for court-ordered re-entry program;
- w. Residential facility for homeless individuals;
- x. Riding stable;
- y. Solar panel (ground mounted);
- z. Sorority house;
- aa. Truck fueling station; and
- bb. Truck stop.

2. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of: (a) all persons who own property comprising the Real Estate, and their successors and assigns; and (b) the Zoning Administrator of City of Fort Wayne ("Zoning Administrator") and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate.
3. Enforcement. Any violation of this Commitment shall be deemed a violation of the Zoning Ordinance; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Plan Commission or any enforcement official designated in the Zoning Ordinance, or any successor agency having zoning jurisdiction over the Real Estate. Pursuant to I.C. 36-7-4-1015, the Plan Commission, or any enforcement official designated in the Zoning Ordinance, shall be entitled to all legal and equitable remedies available, including specific performance and injunctive relief, for any violation of this Commitment. The Plan Commission enforcement rights are cumulative, not exclusive.
4. Amendment or Termination. This Commitment may be modified or terminated in accordance with the Zoning Ordinance and I.C. 36-7-4-1015, as they may be amended from time-to-time.
5. Effective Date. This Commitment shall be deemed effective upon the Commitment being duly recorded in the Office of the Recorder of Allen County, Indiana.
6. Statutory Authority. This Commitment is pursuant to I.C. 36-7-4-1015.

7. 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.
8. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

“DECLARANT”

POOCHICKIEBURGER, LLC

BY: _____
Robert A. Clevenger, Jr., Member

EXECUTED AND DELIVERED in my presence:

[Witness' Signature]
Witness: _____
[Witness' Printed Name]

STATE OF INDIANA)
) '':
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this _____ day of November 2020, personally appeared Robert A. Clevenger, Jr., Member of Poochickieburger, LLC and acknowledged the execution of the foregoing. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

Signature: _____
Notary Public

Printed: _____
Resident of _____ County

STATE OF INDIANA)
) '':
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this _____ day of November, 2020, personally appeared _____ [Witness' Name], being known or proved 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 Robert A. Clevenger, Jr. in the foregoing subscribing witness' presence. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: _____

Signature: _____
Notary Public

Printed: _____
Resident of _____ County

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. Robert C. Kruger

This Instrument Prepared by: Robert C. Kruger, Attorney at Law, Attorney Identification No. 22738-02, Burt, Blee, Dixon, Sutton & Bloom, 200 East Main Street, Suite 1000, Fort Wayne, IN 46802

When recorded, return to: Department of Planning Services, 200 East Berry, Suite 150, Fort Wayne, IN 46802

EXHIBIT "A"

A tract of land located in the Northeast Quarter of Section 16, Township 31 North, Range 13 East, in Allen County, the State of Indiana, more fully described as follows:

COMMENCING at a Rebar stake with cap (FIRM 0042) situated in the Northeast corner of said Northeast Quarter; Thence South 03 Degrees 09 Minutes 27 Seconds East (Indiana State Plane Coordinate System East Zone-GPS Grid Basis of Bearings), a distance of 614.99 feet along the East line of said Northeast Quarter; Thence South 86 Degrees 50 Minutes 33 Seconds West, a distance of 65.00 feet along the North line extended of Parcel 1 as described in the conveyance to Bastress Family Limited Partnership as recorded in Allen County Document No. 2008004763 to the Northeast corner thereof (also being in the West right-of-way line of Maplecrest Road as described in the conveyance to the County of Allen, State of Indiana as recorded in Allen County Document No. 95-056786), the **TRUE POINT OF BEGINNING**; Thence South 86 Degrees 50 Minutes 33 Seconds West, a distance of 220.00 feet along the North line of said Parcel 1 to the Northwest corner thereof; Thence South 03 Degrees 09 Minutes 27 Seconds East, a distance of 200.00 feet along the West line of said Parcel 1 to the Southwest corner thereof; Thence South 86 Degrees 50 Minutes 33 Seconds West, a distance of 193.71 feet along the South line extended of said Parcel 1; Thence North 02 Degrees 44 Minutes 15 Seconds West, a distance of 395.48 feet along the East line of the tract of land described in the conveyance to Maplecrest Shops, LLC in Allen County Document No. 2016063045 to the Northeast corner thereof; Thence South 87 Degrees 15 Minutes 45 Seconds West, a distance of 241.20 feet along the North line and the North line extended of said Maplecrest Shops tract; Thence North 48 Degrees 06 Minutes 16 Seconds West, a distance of 44.10 feet; Thence North 02 Degrees 56 Minutes 33 Seconds West, a distance of 338.67 feet along the East line of the tract of land described in the conveyance to Midwest Green Lawn Care & Landscaping LLC in Allen County Document No. 2020022903 to the Southwest corner of the tract of land described in the conveyance to the City of Fort Wayne, Indiana in Allen County Document No. 203126353; Thence North 87 Degrees 00 Minutes 18 Seconds East, a distance of 196.74 feet along the South line of said City of Fort Wayne tract [being a line that is parallel with and Fifty (50) feet South of the North line of said Northeast Quarter] to the Southeast corner thereof; Thence South 87 Degrees 17 Minutes 04 Seconds East, a distance of 201.00 feet along the South line of the County of Allen tract referenced above; Thence North 87 Degrees 00 Minutes 18 Seconds East, a distance of 85.20 feet along the South line of said County of Allen tract [being a line that is parallel with and Seventy (70) feet South of the North line of said Northeast Quarter] to the Northwest corner of Parcel 3 in the Bastress Family conveyance referenced above; Thence South 03 Degrees 09 Minutes 27 Seconds East, a distance of 220.00 feet along the West line of said Parcel 3 to the Southwest corner thereof; Thence North 87 Degrees 00 Minutes 18 Seconds East, a distance of 200.00 feet along the South line of said Parcel 3 to the Southeast corner thereof; Thence South 03 Degrees 09 Minutes 27 Seconds East, a distance of 40.00 feet along the West line of the County of Allen tract referenced above to the Northeast corner of Parcel 4 in the Bastress Family conveyance referenced above; Thence South 87 Degrees 00 Minutes 18 Seconds West, a distance of 125.00 feet along the North line of said Parcel 4 to the Northwest corner thereof; Thence South 03 Degrees 09 Minutes 27 Seconds East, a distance of 175.00 feet along the West line of said Parcel 4 to the Southwest corner thereof; Thence North 87

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**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Poochickieburger, LLC
Address 1219 Oak Bay Run
City Fort Wayne State IN Zip 46825
Telephone _____ E-mail _____

Contact Person
Contact Person Robert C. Kruger, Esq.
Address 200 East Main Street, Ste. 1000
City Fort Wayne State IN Zip 46802
Telephone 260-426-1300 E-mail rkruger@burtblee.com

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Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 7301 Maplecrest Road
Present Zoning SC Proposed Zoning C3 Acreage to be rezoned 6.835
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Sewer provider FW Water provider FW

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By: Rob Clevenger, Member
(printed name of applicant)

(signature of applicant)

10/5/20
(date)

By: Rob Clevenger, Member
(printed name of property owner)

(signature of property owner)

10/5/20
(date)

(printed name of property owner)

(signature of property owner)

(date)

(printed name of property owner)

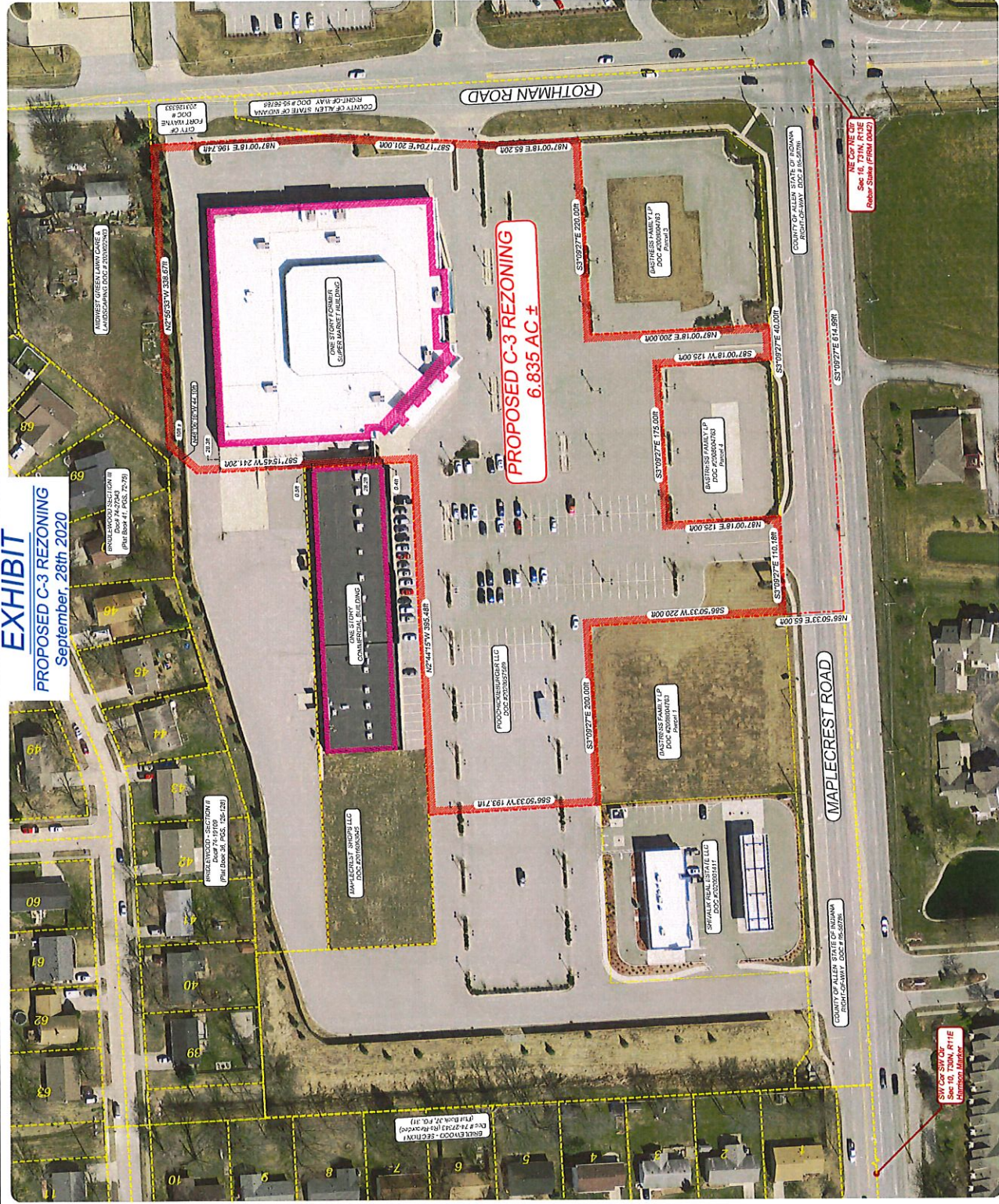
(signature of property owner)

(date)

Received	Receipt No.	Hearing Date	Petition No.
<u>10/05/20</u>	<u>135439</u>	<u>11-9-2020</u>	<u>REZ-2020-0037</u>

EXHIBIT

September, 28th 2020



OWNER: POOCHICKIEBURGER LLC
7301 Maplecrest Road
Fort Wayne, IN 46835

ENGINEER / SURVEYOR:

DABEC
D.A. Brown Engineering Consultants
5491 County Road 427, P.O. Box 389, Auburn, IN 46708
Phone: (260) 825 - 2020 Fax: (260) 925 - 1212
www.dabrowengineering.com

Legal Description:

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