

1 **#REZ-2020-0012**

2 **BILL NO. Z-20-05-16**

3
4 **ZONING MAP ORDINANCE NO. Z-_____**

5 **AN ORDINANCE amending the City of Fort Wayne**
6 **Zoning Map No. L-07 (Sec. 14 of Wayne Township)**

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

9 SECTION 1. That the area described as follows is hereby designated an R3
10 (Multiple Family Residential) District under the terms of Chapter 157 Title XV of the Code of
11 the City of Fort Wayne, Indiana:

12 Lots Numbered 2 and 3 in Cook's Subdivision of the East Half of Wayne Township Outlot
13 Two (2) in the City of Fort Wayne, Allen County, Indiana, according to the Plat thereof,
14 Recorded in Plat Book 1, Page 22, in the Office of the Recorder of Allen County, Indiana.

15 **TOGETHER WITH:**

16 The East 100 feet, except the West 10 feet, of Lot Number 1 in Cook's Subdivision of the
17 East half of Wayne Township Outlot Number 2, according to the plat thereof, recorded in
18 Plat Record 1, page 22, in the Office of the Recorder of Allen County, Indiana.

19 and the symbols of the City of Fort Wayne Zoning Map No. L-07 (Sec. 14 of Wayne
20 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
21 Wayne, Indiana is hereby changed accordingly.

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

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

APPROVED AS TO FORM AND LEGALITY:

Carol T. Helton, City Attorney



Rezoning Petition REZ-2020-0012 (Indiana Ave)

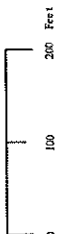


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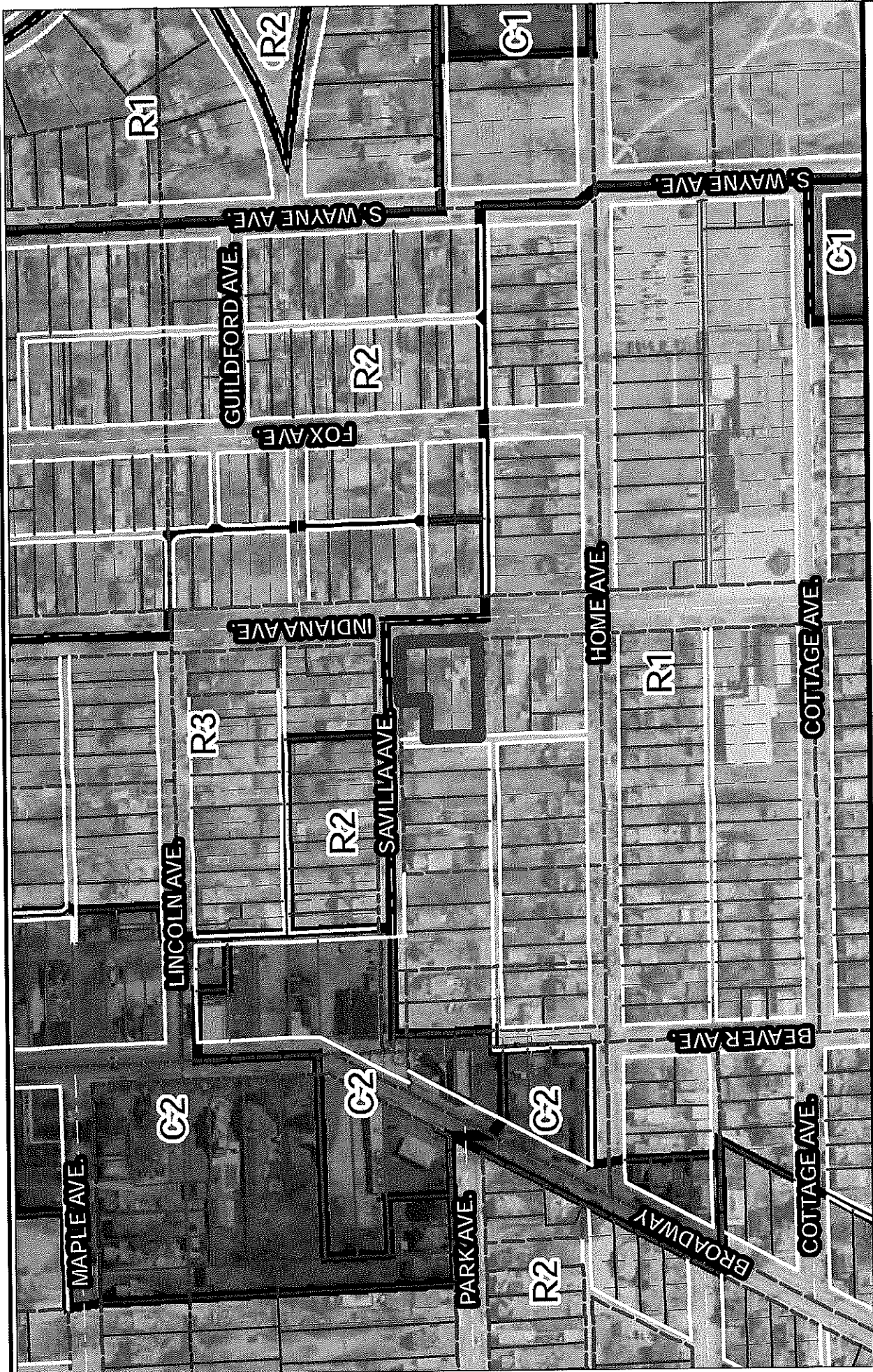
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State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 3/10/2020



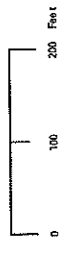
1 inch = 200 feet



Rezoning Petition REZ-2020-0012 (Indiana Ave)



1 inch = 200 feet



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 Photos and Contours: Spring 2009
 Date: 3/1/2020

Applicant

Contact Person

Request

Filing Requirements

Department of Planning Services • 200 East Berry Street • Suite 150 • Fort Wayne, Indiana • 46802
Phone (260) 449-7607 • Fax (260) 449-7682 • www.allencounty.us/dps

Department of Planning Services
Rezoning Petition Application

Applicant
Applicant Kaufmann LLC
Address 2216 S. Calhoun st
City Ft Wayne State IN Zip 46802
Telephone 260-745-489 E-mail KPM. Kerry@gmail.com

Contact Person
Contact Person Kerry Kaufmann
Address 2216 S. Calhoun st
City Ft Wayne State IN Zip 46802
Telephone _____ E-mail _____

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 2802 Indiana Ave
Present Zoning R1 Proposed Zoning R3 Acreage to be rezoned .08
Proposed density _____ units per acre
Township name Wayne Township section # 14
Purpose of rezoning (attach additional page if necessary) _____

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.

Nick Kaufmann (Agent) [Signature] 12-31-19
(printed name of applicant) (signature of applicant) (date)
Nick Kaufmann (Agent) [Signature] 12-31-19
(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.

FACT SHEET

Case #REZ-2020-0012 Bill # Z-20-05-16 Project Start: May 2020	
APPLICANT:	Jesus Ruiz and Kaufmann LLC
REQUEST:	To rezone property from R1/Single Family Residential to R3/Multiple Family Residential to permit the existing multiple family residential and two family residential buildings.
LOCATION:	The addresses of the subject properties are 2802 and 2810 Indiana Avenue (Section 14 of Wayne Township).
LAND AREA:	Approximately 0.6 acres
PRESENT ZONING:	R1/Single Family Residential
PROPOSED ZONING:	R3/Multiple Family Residential
COUNCIL DISTRICT:	5-Geoff Paddock
ASSOCIATED PROJECT:	none
SPONSOR:	City of Fort Wayne Plan Commission

May 27, 2020 Public Hearing

- Three residents spoke at the hearing in opposition.
- Tom Freistroffer, Justin Shurley and Rachel Tobin-Smith were absent.

June 15, 2020 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

A motion was made by Ryan Neumeister and seconded by Tom Freistroffer to return the ordinance with a Do Pass recommendation and Written Commitment to Common Council for their final decision.

6-0 MOTION PASSED

- Don Schmidt, Justin Shurley and Rachel Tobin-Smith were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
July 9, 2020

PROJECT SUMMARY

SITE HISTORY:

- According to property record cards, 2810 Indiana Avenue is currently being utilized as a multiple family residential structure and 2802 Indiana Avenue is currently being utilized as a two family residential structure. These properties were rezoned to R1 in 2007 as part of a downzoning effort by the neighborhood association. The owner of 2802 Indiana Avenue signed the rezoning petition in 2007 but the owner of 2810 Indiana Avenue did not.

STAFF DISCUSSION:

The petitioners are requesting to rezone the properties to R3/Multiple Family Residential from R1/Single Family Residential. The property at 2802 Indiana Avenue is utilized as a two family residential use and the property at 2810 Indiana Avenue is utilized as a multiple family residential building. The proposal is being brought to the Plan Commission to bring the current uses into compliance with a zoning district that permits the uses, R3/Multiple Family Residential. R3/Multiple Family Residential zoning exists to the north and east of the rezoning site. The site and properties to the south and west are zoned R1/Single Family Residential currently. At the public hearing, the applicant should discuss on the record how long they are aware the structures have been utilized as non-single family uses. As mentioned, these two properties were part of a 73-parcel rezoning effort in 2007 to rezone the general area to R1/Single Family Residential. The applicant has stated that with the current uses not zoned properly, financing from lenders for improvements or sale of the property, is difficult.

If the two family and multiple family building uses have continued since the time of the rezoning in 2007 and are deemed to be nonconforming, then the uses may be continued.

There is no development plan associated with this request and there are no additional structures or additions proposed for this site at this time.

The rezoning site is within the Creighton Home Neighborhood, which is associated with the Packard Area Planning Alliance (PAPA). A neighborhood plan was completed for PAPA in Spring of 2005. A policy within within the plan includes: Encourage conversion and reversion of non-conforming two family, multiple family and other non-conforming land uses to conforming uses. The plan also outlined areas for downzoning, which was completed in 2007. The staff report from the rezoning petition in 2007 mentioned that 12 two family structures and two multiple family buildings became nonconforming with the downzoning to R1/Single Family Residential. Since 2007, lending institutions have become more stringent with the necessity for proper zoning.

A written commitment may be considered by the Plan Commission if there is concern that the structures may be converted into other R3 uses, or if the number of dwelling units on site increased. With a written commitment that limits additional permitted R3 uses, the rezoning becomes compatible with the existing conditions of the area. No reversion of the structures to single family residential has occurred since the rezoning in 2007. The area continues to have a high concentration of rentals, in a variety of residential densities.

PUBLIC HEARING SUMMARY:

Presenter: Ben Wahli presented the proposal as outlined above. Mr. Wahli explained that the owner of 2810 Indiana would like to make improvements and cannot get financing without proper zoning.

Public Comments:

Dawn Parnin, Creighton-Home Neighborhood Association – Opposed to the request. Referenced single-family preservation in the PAPA plan, discouraging further splitting of properties.

Kody Tinnel, PAPA Neighborhood, 1310 West Foster Parkway – Opposed based on the current neighborhood plan.

Jim Sack, West Rudisill Association, 902 West Rudisill – Opposed on behalf of West Rudisill Neighborhood.

Rebuttal:

Ben Wahli – Understands the concern of the neighborhoods. His client has maintained the property and was unaware that the property was downzoned when he tried to get financing for a new roof and mechanical improvements. The property will likely deteriorate without funds to make the improvements.

A Written Commitment has been submitted to not increase the units in either building.

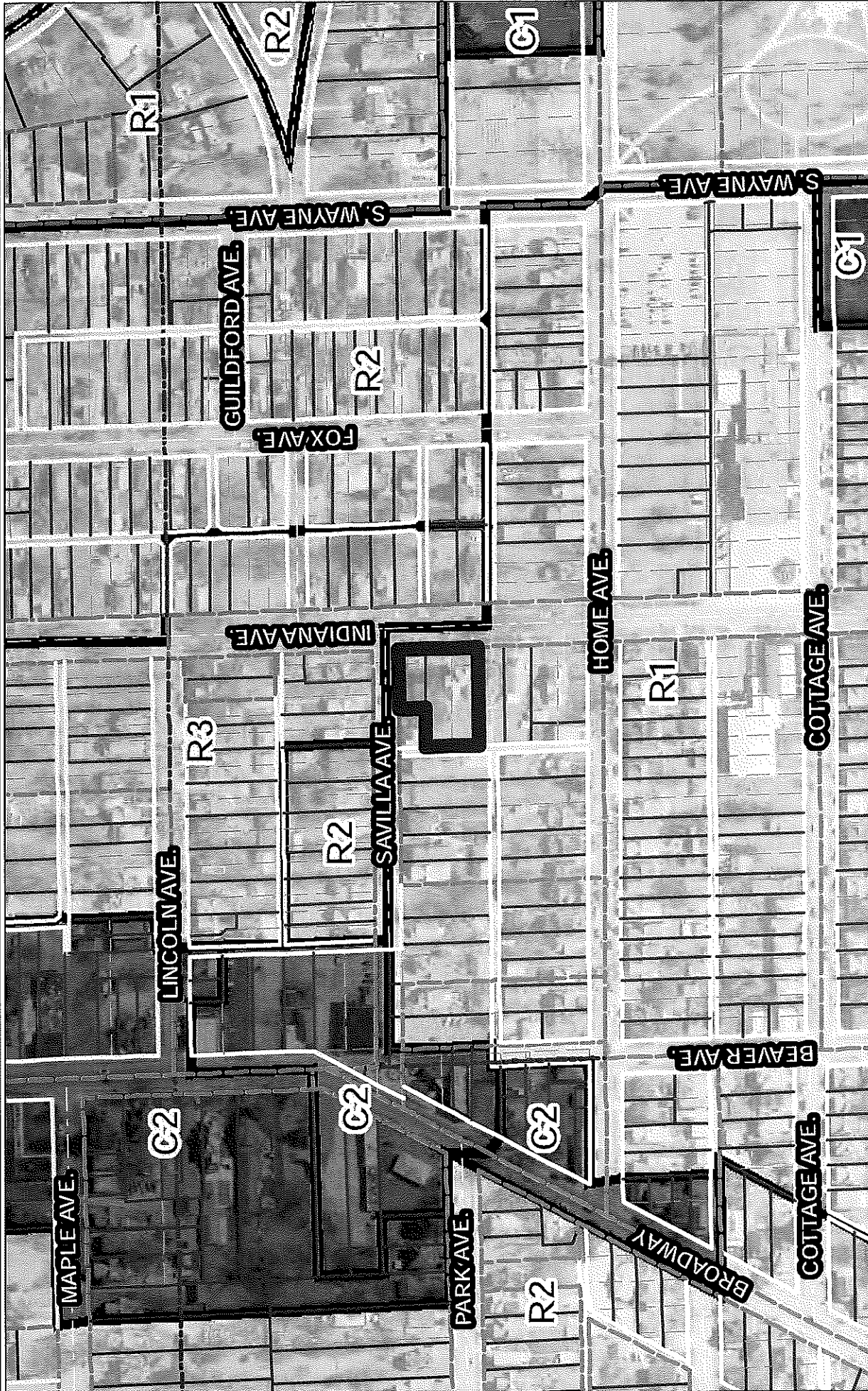


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 Date: 3/19/2020

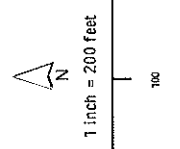


Rezoning Petition REZ-2020-0012 (Indiana Ave)



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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2020
Date: 3/14/2020





6/30/2020
Jesus Ruiz
84 S 14th St Apt 2
Richmond, IN 47374

Dear Jesus;

This letter is being written to follow up on our conversation for financing of real estate located at 2810 Indiana Ave, Fort Wayne, IN 46807.

As it stands, the current zoning on said property will prohibit us from financing the property as a multi-unit dwelling. R1 zoning would require us to treat the property as a single unit dwelling. To be considered as a multi-unit dwelling it would need to be zoned as R3 or higher without evidence that that the property were grandfathered in and was able to be rebuilt as a multi-unit dwelling if something were to happen to it.

Thank you for choosing Premier Bank for your mortgage loan needs. If you have any questions, please contact me at (260)414-5799.

Sincerely,

Frank Yanko

Frank Yanko
Mortgage Loan Originator
Loan Originator Number 1373263



WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made as of this ____ day of _____, 2020 by _____ (herein the, "Declarant"), under the following circumstances:

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of approximately .35 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (herein, the "Real Estate");

WHEREAS, Declarant has submitted a Zoning Map Amendment Application with the City of Fort Wayne Plan Commission ("Plan Commission"), bearing number REZ-2020-0012 (the "Zoning Application"), with respect to the Real Estate;

WHEREAS, pursuant to the Zoning Application, Declarant, has requested the Real Estate be rezoned to R3/Multiple Family Residential pursuant to the City of Fort Wayne zoning ordinance (the "Ordinance");

WHEREAS, Declarant, in conjunction with the Zoning Application, voluntarily submits the Commitment, pursuant to section 157.503 of the Ordinance and Indiana Code 36-7-4-1015, for the purpose of limiting certain uses of the Real Estate, and requests that this Commitment be considered as part of the Zoning 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 a portion of the Real Estate.

1. Uses.

The following uses are not permitted on the real estate:

- a. assisted living facility
- b. fraternity house
- c. sorority house
- d. retirement facility
- e. group residential facility (small)
- f. off-site campus housing.

2. Maximum Number of Units.

2802 Indiana Avenue will have a maximum of two dwelling units on the parcel.

2810 Indiana Avenue will have a maximum of 4 dwelling units on the parcel.

3. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of all persons who own property comprising the Real Estate, their successors and assigns, and shall also inure to the benefit of the Zoning Administrator of the City of Fort Wayne and the Plan Commission. This Commitment and the restrictions and limitations set forth herein shall run with the Real Estate, and any conveyance thereof, shall be binding upon Declarant and its successors and assigns as owners of the Real Estate.

4. Enforcement Rights. The City of Fort Wayne Zoning Administrator (the "Zoning Administrator") and the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of an obligation in this Commitment; and in the event such an enforcement action is commenced, the Zoning Administrator or the Plan Commission (as applicable) shall have the remedies allowed by the Ordinance (or the ordinance governing the Real Estate at the time of the enforcement action) and I.C. §36-7-4-1015, which remedies shall be cumulative and not exclusive. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Zoning Administrator or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

5. Amendment or Termination. This Commitment may be amended or terminated upon application by an owner of the Real Estate and only with the prior written consent of all owners of the Real Estate and the Plan Commission, following a public hearing to consider said amendment or termination.

6. Remedies. In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Commitment, without the necessity of proof of actual damage, in the event of an actual breach or violation, or threatened breach or violation, of any restriction or covenant under this Commitment. Such remedies shall be cumulative and nonexclusive, and shall be afforded to any owner of property which comprises all or a portion of the Real Estate, the Zoning Administrator of the City of Fort Wayne and the Plan Commission.

7. Permits. No permits shall be issued under the City of Fort Wayne Zoning Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County Recorder and a recorded and execute copy of the Commitment is delivered to the Zoning Administrator and the Plan Commission.

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

10. Effective Date. This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

11. Statutory Authority. This Commitment is made pursuant to I.C. §36-7-4-1015(a)(1).

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

"DECLARANT"

By: _____

Its:

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this ____ day of _____, 2020 personally appeared _____, the _____ of _____, and acknowledged the execution of the foregoing.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

_____, Notary Public

My Commission Expires: _____

My County of Residence: Allen

THIS INSTRUMENT prepared by _____

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

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

EXHIBIT “A”

Department of Planning Services
Rezoning Petition Application

Applicant
Applicant Jesus Ruiz
Address 84 S 14 ST Apt 2
City Richmond State IN Zip 47374
Telephone 260 4500434 E-mail Ruiz Management@yahoo.com

Contact Person
Contact Person Jesus Ruiz
Address 84 S 14 ST Apt 2
City Richmond State IN Zip 47374
Telephone 260 4500434 E-mail Ruiz Management@yahoo.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 2810 Indiana, Fort Wayne IN 46807
Present Zoning R1 Proposed Zoning R3 Acreage to be rezoned .42
Proposed density .595 units per acre
Township name Wayne Township section # 14
Purpose of rezoning (attach additional page if necessary) This additional area only contains multi-family homes. Rezone to align zoning with present use.
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

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Jesus Ruiz Jesus Ruiz 12/31/19
(printed name of applicant) (signature of applicant) (date)

Jesus Ruiz Jesus Ruiz 12/31/19
(printed name of property owner) (signature of property owner) (date)

Candace Ruiz Candace Ruiz 12/31/19
(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.
3-3-2020	133457	4-13-2020	REZ- 2020-0012

Department of Planning Services
Rezoning Petition Application

Applicant Kaufmann LLC
Address 2216 S. Calhoun St
City Ft Wayne State IN Zip 46802
Telephone 260-745-489 E-mail KPM. Kerry@gmail.com

Contact Person Kerry Kaufmann
Address 2216 S. Calhoun St
City Ft Wayne State IN Zip 46802
Telephone _____ E-mail _____

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

☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 2802 Indiana Ave
Present Zoning R1 Proposed Zoning R3 Acreage to be rezoned .08
Proposed density _____ units per acre
Township name Wayne Township section # 14
Purpose of rezoning (attach additional page if necessary) _____

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Nick Kaufmann (Agent) [Signature] 12-31-19
(printed name of applicant) (signature of applicant) (date)

Nick Kaufmann (Agent) [Signature] 12-31-19
(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.

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2020-0012
Bill Number: Z-20-05-16
Council District: 5-Geoff Paddock

Introduction Date: May 26, 2020

Plan Commission
Public Hearing Date: May 27, 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 0.5 acres from R1/Single Family Residential to
R3/Multiple Family Residential.

Location: 2802 and 2810 Indiana Avenue

Reason for Request: To bring the existing multiple family uses into compliance with the
Zoning Ordinance.

Applicants: Jesus Ruiz and Kerry Kaufmann

Property Owner: Jesus Ruiz and Kerry Kaufmann

Related Petitions: none

Effect of Passage: Properties will be rezoned to the R3/Multiple Family Residential district
which will allow the existing multiple family structures as a permitted use
by right.

Effect of Non-Passage: The properties will remain zoned R1/Single Family Residential, which
does not permit the existing uses. The ability to refinance, sell, or make
improvements to the properties may be hindered.