

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2021-0065
Bill Number: Z-22-01-05
Council District: 5-Geoff Paddock

Introduction Date: January 11, 2022

Plan Commission
Public Hearing Date: January 10, 2022 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 1.4 acres from C3/General Commercial to I1/Limited Industrial with a Written Commitment to limit certain uses.

Location: 520 Spring Street

Reason for Request: To permit the existing uses on the site.

Applicant: Jerad Harlow

Property Owner: Jerad Harlow

Related Petitions: Primary Development Plan, 520 Spring Street

Effect of Passage: Property will be rezoned to the I1/Limited Industrial zoning district, which will bring the existing businesses into compliance with the zoning ordinance. All uses are preformed indoors.

Effect of Non-Passage: The property will remain zoned C3/General Commercial which permits a variety of commercial uses, including outdoor uses.

1 **#REZ-2021-0065**

2 **BILL NO. Z-22-01-05**

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

4 **AN ORDINANCE amending the City of Fort Wayne**
5 **Zoning Map No. L-14 (Sec. 35 of Washington Township)**

6
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 I1 (Limited
10 Industrial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
11 Wayne, Indiana:

12 Parcel I:

13 A space in the City of Fort Wayne, Allen County, Indiana, which lies south of Huffman's
14 Addition and north of Lots Numbered 9 and 12 in Feeder Addition, more particularly
15 described as follows, to-wit:

16 Beginning at the point of intersection of the North line of said Lot Number 12 with the East
17 line of an alley; thence Northerly, on and along said alley East line, a distance of 156.0 feet
18 to a 5/8 inch diameter rebar found; thence Easterly, by a deflection angle right of 89
19 degrees 48 minutes, on and along the South line of an alley, a distance of 222.0 feet to the
20 point of intersection of said alley South line with the West right-of-way line of Beach Street
21 as dedicated in Document Number 80-2467 in the Office of the Recorder of Allen County,
22 Indiana, thence Southerly, by a deflection angle right of 91 degrees 01 minutes, on and
23 along said West right-of-way line, a distance of 60 feet to the Northeast corner of Lot
24 Number 9 in said Feeder Addition; thence Southerly, by a deflection angle right of 65
25 degrees 33 minutes, on and along the Northerly line of Lots Numbered 9 and 12 in said
26 Feeder Addition, a distance of 241.4 feet (recorded 240 feet) to the point of beginning,
27 containing 0.55 acres of land, more or less.

28 Parcel II:

29 The West 50 feet of Lot Number 11 and the East 100 feet of Lot Number 11, the West 50
30 feet of Lot Number 12, the East 100 feet of Lot Number 12, the West 50 feet of the North
31 10 feet of Lot Number 13, the East 100 feet of the North 10 feet of Lot Number 13, the
32 North Fractional part of Lot Number 14, together with vacated alley adjacent to Lot
33 Number 11, Number 12, Number 13, Number 14 and the East 15 feet of Fractional Lot
34 Number 15, except the West 5.5 feet for ally purposes all in Beck's Homestead Amended
35 Addition, together with Lot Number 9 and Lot Number 10 in Feeder Addition, parts of Lot
36 Number 11 and part of Lot Number 12 in Feeder Addition lying East of alley, together with
37 vacated alley adjacent to Lots Number 9, 10, 11 and 12.

Also described as follows pursuant to a survey of Donovan Engineering dated as of September 29, 1994:

The following parcels of real estate in F.J. Beck's Homestead Addition amended to the City of Fort Wayne:

Lots Numbered 11 and 12 and 13, except the East 100 feet thereof and except that part of said Lot Number 13 appropriated for the widening of Spring Street; also Lot Number 14 and that part of Lot Number 15 lying East of the alley heretofore opened through said Lot Number 15, excepting from said Lot Number 14 and partial Lot Number 15 portions thereof appropriated for the opening of Spring Street; also the vacated alley adjoining said Lot Number 14 on the East, excepting the part appropriated for the widening of Spring Street, all according to the plat thereof, recorded in Deed Record 104, Page 622.

Also:

Lot Number 12 in Feeder Addition to the City of Fort Wayne, in Allen County, Indiana, according to the plat thereof, recorded in Plat Record 3, Page 2, in the Office of the Recorder of Allen County, Indiana, except that part thereof lying West of the East line of the first alley east of Short Street, in the City of Fort Wayne, Indiana, as opened and established under Declaratory Resolution No. 162-1908 and the West half of that part of the vacated alley adjoining said lot on the East, vacated under Declaratory Resolution 168-1908, adopted and confirmed by the Board of Public Works of the City of Fort Wayne, Indiana.

Also:

Lot Number 11 in Feeder Addition to the City of Fort Wayne, in Allen County, Indiana, according to the plat thereof, recorded in Plat Record 3, Page 2, in the Office of the Recorder of Allen County, Indiana, except that part thereof lying West of the East line of the first alley east of Short Street, in the City of Fort Wayne, Indiana, as opened and established under Declaratory Resolution No. 162-1908 and to the West half of that part of the vacated alley adjoining said lot on the East, vacated under Declaratory Resolution No 168-1908, adopted and confirmed by the Board of Public Works of the City of Fort Wayne, Indiana.

Also known as:

Commencing at a point on the North Boundary of Spring Street, 100 feet West of the West line of what is now known as Beach Street; thence North 77.6 feet to a point also located 100 feet West of the West boundary of Beach Street; thence Southwesterly 70.96 feet to a point located 96.52 feet North of the North line of Spring Street and on the East line of a 10 foot alley; thence South along the East line of said 10 foot alley to the North boundary of Spring Street; thence East along the North Boundary of Spring Street, 122.5 feet to the place of Beginning.

Also:

Lots Numbered 9 and 10 in Feeder Addition to the City of Fort Wayne, according to the Plat thereof, recorded in Plat Record 3, Page 2, in the Office of the Recorder of Allen County, Indiana, and one-half of the vacated alley adjoining these lots.

1 And also:

2 The East 100 feet of Lots Numbered 11 and 12 and the East 100 feet of the North 10 feet of
3 Lot Number 13 in F.J. Beck's Homestead Addition Amended, according to the Plat thereof,
4 recorded in Deed Record 104, Page 622, in the Office of the Recorder of Allen County,
5 Indiana.

6 This real estate is also described as follows:

7 The West 50 feet of Lot Number 11 and the East 100 feet of Lot Number 11, the West 50
8 feet of Lot Number 12, and the East 100 feet of Lot Number 12, the West 50 feet of the
9 North 10 feet of Lot Number 13, the East 100 feet of the North 10 feet of Lot Number 13,
10 the North Fractional part of Lot Number 14, together with vacated alley adjacent to Lot
11 Number 11, Number 12, Number 13, Number 14 and the East 15 feet of Fractional Lot
12 Number 15, except the West 5.5 feet for alley purposes, all in Beck's Homestead Amended
13 Addition, together with Lot Number 9 and Lot Number 10 in Feeder Addition, parts of Lot
14 Number 11 and part of Lot Number 12 in Feeder Addition lying East of alley, together with
15 vacated alley adjacent to Lot Number 9, 10, 11 and 12.

16 The above described rea estate is more particularly described as follows:

17 A tract of land lying South of Huffman's Addition as recorded in the plat thereof in the
18 Office of the Recorder of Allen County, Indiana, more particularly described as follows:

19 Beginning at the intersection of the North right-of-way line of Spring Street and the West
20 right-of-way of Beach Street in the City of Fort Wayne, Indiana, said point being 10 feet
21 South of the Northeast corner of Lot 13 in F.J. Beck's Homestead addition Amended,
22 according to the plat thereof, recorded in Deed Record 104, page 622 in the Office of the
23 Recorder of Allen County, Indiana; thence South 88 degrees 08 minutes 09 seconds West
24 (assumed bearing and basis for this description) along the North right-of-way of Spring
25 Street a distance of 222.0 feet to a point on the East line of a public alley; thence North 01
26 degrees 58 minutes 06 seconds West along the East line of a public alley a distance of 251.6
27 feet to a point on the South line of a public alley, said point being 10 feet South of the
28 South line of Huffman's Addition; thence North 87 degrees 38 minutes 40 seconds East
29 along the South line of the public alley a distance of 222.0 feet to a point on the West right
30 of way line of Beach Street; thence South 01 degrees 58 minutes 06 seconds East along the
West right-of-way of Beach Street and the East line of Lot 9 and Lot 10 in Feeder Addition
as recorded in Plat Record 3, page 2 and along the East line of Lots 11, 12 and 13 in F.J.
Beck's Homestead Addition amended a distance of 253.51 feet to the point of beginning,
containing 1.287 acres.

and the symbols of the City of Fort Wayne Zoning Map No. L-14 (Sec. 35 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

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Jerad Harlow
Address 3108 Lower Huntington Road
City Fort Wayne State IN Zip 46809
Telephone 260-747-3939 Fax _____ E-mail jerad@propxllc.com

Property Ownership
Property Owner Waynedale Ventures LLC
Address 3108 Lower Huntington Road
City Fort Wayne State IN Zip 46809
Telephone 260-747-3939 Fax _____ E-mail jerad@propxllc.com

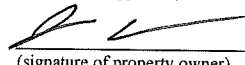
Contact Person
Contact Person Jerad Harlow
Address 3108 Lower Huntington Road
City Fort Wayne State IN Zip 46809
Telephone 260-747-3939 Fax _____ E-mail jerad@propxllc.com

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

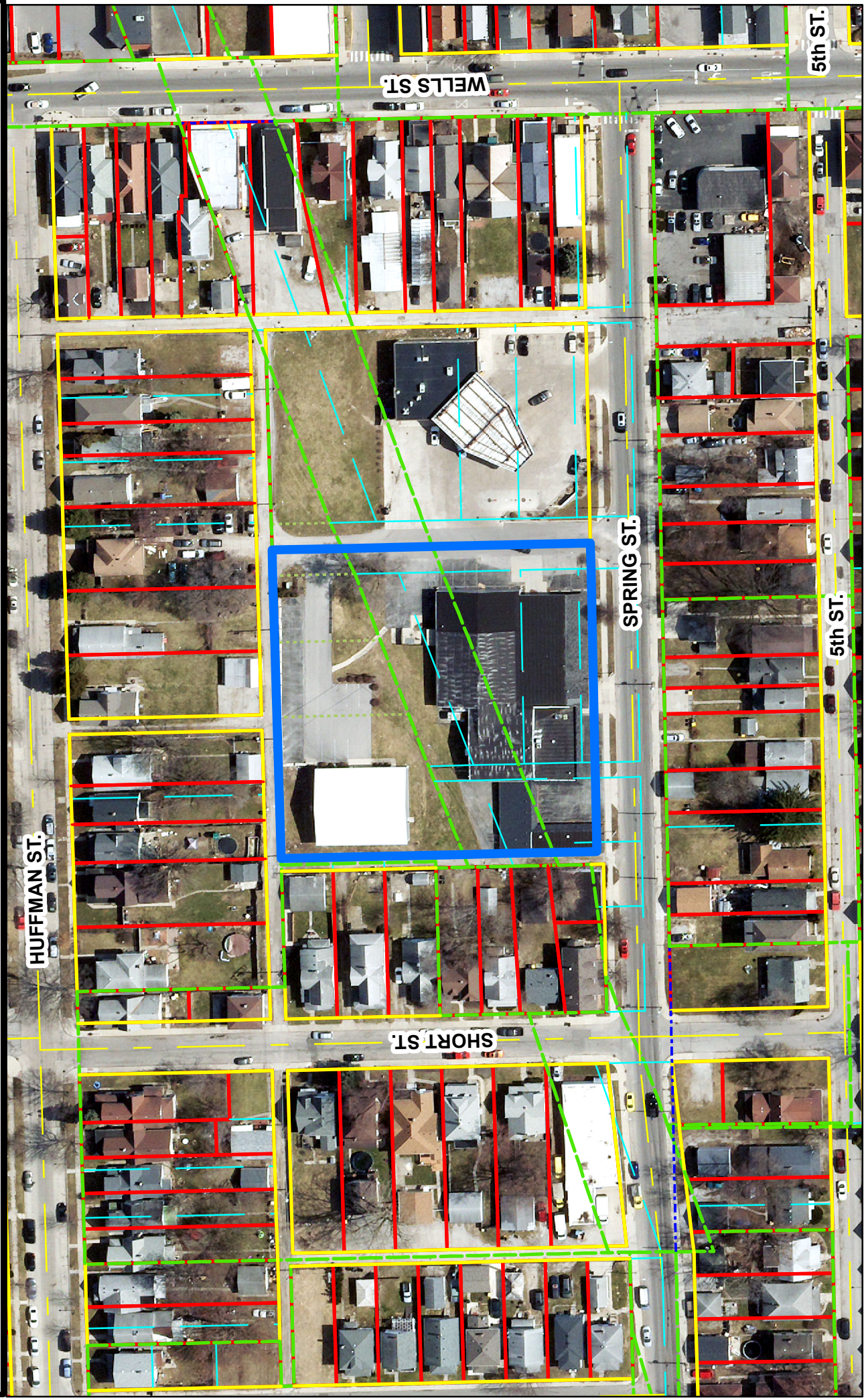
Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 520 Spring Street/1629 Beach Street
Present Zoning C3 Proposed Zoning I1 Acreage to be rezoned 1.36
Proposed density _____ units per acre
Township name Wayne Township section # 0035
Purpose of rezoning (attach additional page if necessary) To be bring building up to city standards for existng tenets and future tenets.
Sewer provider FW Water provider FW

Filing Requirements
Applications will not be accepted unless the following filing requirements are submitted with this application. Please contact staff 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>Jerad Harlow</u> (printed name of applicant)	 (signature of applicant)	<u>10/18/21</u> (date)
<u>Jerad Harlow</u> (printed name of property owner)	 (signature of property owner)	<u>10/18/21</u> (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)

Received <u>11/29/21</u>	Receipt No. <u>138961</u>	Hearing Date <u>1-10-22</u>	Petition No. <u>REZ2021-0065</u>
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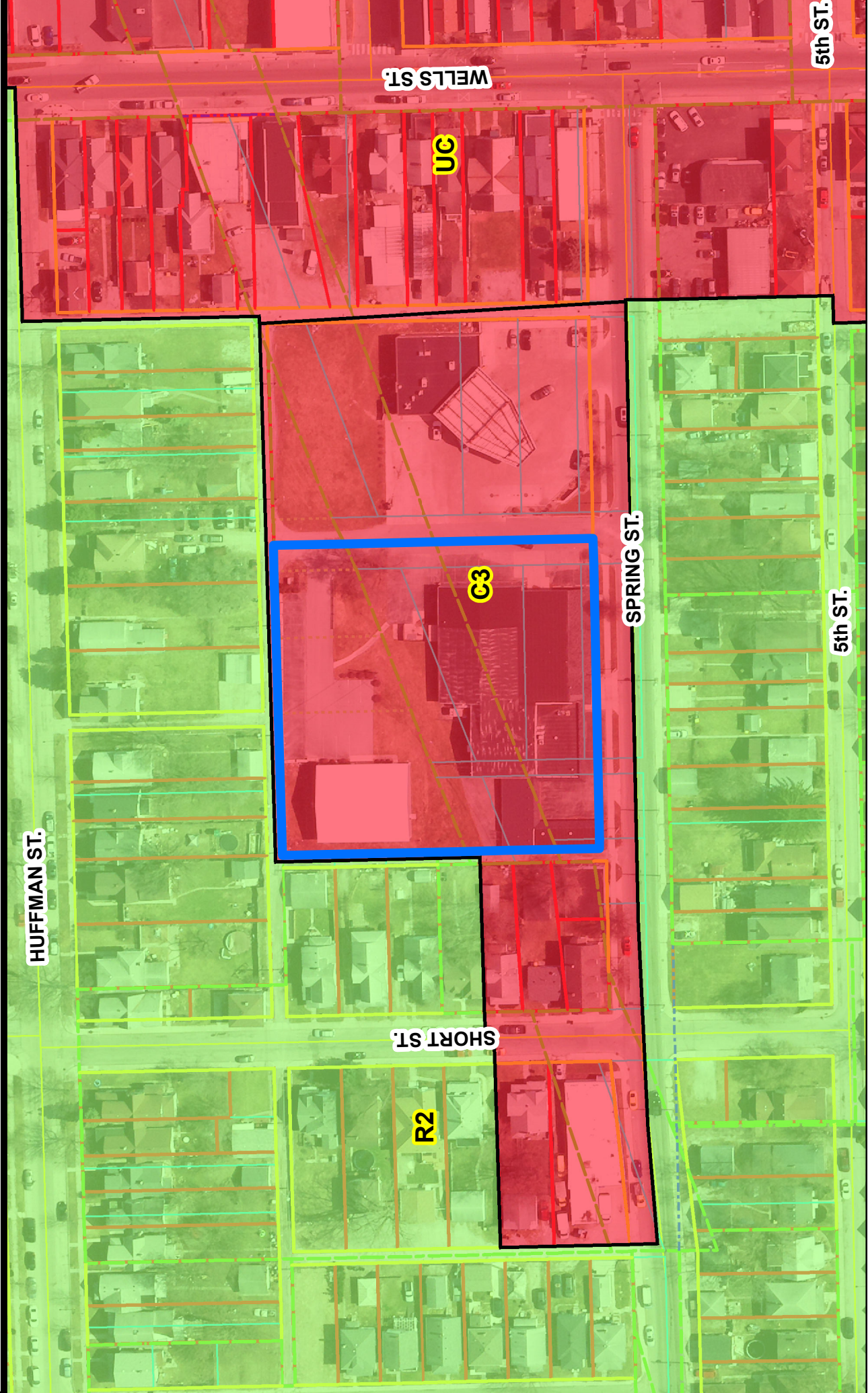
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

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 North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2009
 Date: 12/30/2021



1 inch = 100 feet

REZ-2021-0065 PDP-2021-0046 - 520 Spring Street



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1 inch = 100 feet

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (this “Commitment”) is made this 17 day of November, by Jerad Harlow (“Declarant” or “Applicant”).

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate located in Wayne Township, Allen County, Indiana, the legal description of which is attached hereto as **Exhibit “A”**, more commonly referred to 520 Spring Street and 1629 Beach Street (the “Real Estate”); and

WHEREAS, Applicant filed a Rezoning Petition 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.

Prohibited Uses:

- Air Freight Service
- Aquaculture
- Aquaponics
- Boat Dry Dock Facility
- Correctional Services Facility
- Cosmetic Product Compounding
- Crematory
- Dairy/Creamery
- **Distribution Facility for:**
 - Batteries
 - Petroleum Products
- Dry Cleaning/Laundry Facility (Central)
- **Equipment Supply Facility for:**
 - Restaurant
- Freight Service
- Group Residential Facility (Large)
- Group Residential Facility (Small)
- Homeless/Emergency Shelter
- Hydroponics
- **Limited Assembly and Fabrication of:**
 - Service Industry Machines
- Recreation Facility
- Residential Facility for Homeless Individuals
- Vehicle Technology (Advanced)
- Wind Energy Conversion System (Micro)
- Wind Energy Conversion System (Standard)
- Animal Service, Indoor
- Community Facility
- Recreation/Tourism, Limited

- Residential Facility, General

1. **Commitment language.**

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.

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[SIGNATURE PAGE FOLLOWS]