

#REZ-2022-0035

BILL NO. Z-22-07-11

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. A-06 (Sec. 2 of Aboite Township)**

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

SECTION 1. That the area described as follows is hereby designated a C2 (Limited
Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
Wayne, Indiana:

COMMENCING AT A POINT ON THE NORTH RIGHT OF WAY LINE OF INDIANA
STATE ROAD NUMBER 14 AS NOW ESTABLISHED, SAID POINT BEING 1045.4
FEET EAST OF THE WEST LINE OF THE WEST HALF OF THE SOUTHEAST
QUARTER OF SECTION 2, TOWNSHIP 30 NORTH, RANGE 11 EAST IN ALLEN
COUNTY, INDIANA; THENCE NORTHERLY A DISTANCE OF 492.34 FEET TO A
FENCE; THENCE EASTERLY A DISTANCE OF 133.44 FEET ALONG SAID
FENCE; THENCE SOUTHERLY A DISTANCE OF 495.18 FEET TO A POINT ON
THE NORTH RIGHT OF WAY LINE OF SAID ROAD 14, SAID POINT BEING 137.9
FEET EAST OF THE POINT OF BEGINNING; THENCE WEST ALONG THE
NORTH RIGHT OF WAY LINE OF SAID STATE ROAD 14, TO THE POINT OF
BEGINNING.

EXCEPT THE FOLLOWING:

A PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 2,
TOWNSHIP 30 NORTH, RANGE 11 EAST, ALLEN COUNTY, INDIANA,
DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION;
THENCE NORTH 0 DEGREES 55 MINUTES 04 SECONDS EAST 40.00 FEET
(12.192 METERS) ALONG THE WEST LINE OF SAID QUARTER SECTION TO
THE NORTH BOUNDARY OF S.R. 14 (ALSO KNOWN AS ILLINOIS ROAD);
THENCE SOUTH 89 DEGREES 49 MINUTES 46 SECONDS EAST 1,046.95 FEET
(319.110 METERS) (1,045.4 FEET BY DEED RECORD 619, PAGE 523) ALONG
THE BOUNDARY OF S.R. 14 TO THE SOUTHWEST CORNER AND OF THE
GRANTOR'S LAND AND THE POINT OF BEGINNING OF THIS DESCRIPTION;
THENCE NORTH 2 DEGREES 04 MINUTES 29 SECONDS EAST 20.97 FEET
(6.392 METERS) ALONG THE WEST LINE; THENCE NORTH 87 DEGREES 52
MINUTES 48 SECONDS EAST 116.56 FEET (35.527 METERS); THENCE SOUTH
89 DEGREES 49 MINUTES 46 SECONDS EAST 21.35 FEET (6.507 METERS) TO
THE EAST LINE; THENCE SOUTH 1 DEGREE 32 MINUTES 37 SECONDS WEST
25.62 FEET (7.809 METERS) ALONG SAID EAST LINE TO THE NORTH

1 BOUNDARY OF SAID S.R. 14; THENCE NORTH 89 DEGREES 49 MINUTES 46
2 SECONDS WEST 137.90 FEET (42.032 METERS) ALONG THE BOUNDARY OF
3 SAID S.R. 14 TO THE POINT OF BEGINNING AND CONTAINING 0.075 ACRES
(0.0304 HECTARES), MORE OR LESS.

4 and the symbols of the City of Fort Wayne Zoning Map No. A-06 (Sec. 2 of Aboite
5 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
6 Wayne, Indiana is hereby changed accordingly.

7
8 SECTION 2. If a written commitment is a condition of the Plan Commission's
9 recommendation for the adoption of the rezoning, or if a written commitment is modified and
10 approved by the Common Council as part of the zone map amendment, that written
11 commitment is hereby approved and is hereby incorporated by reference.

12
13 SECTION 3. That this Ordinance shall be in full force and effect from and after its
14 passage and approval by the Mayor.

15 _____
16 Council Member

17 APPROVED AS TO FORM AND LEGALITY:

18 
19 _____
Malak Heiny, City Attorney

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2022-0035
Bill Number: Z-22-07-11
Council District: 4-Jason Arp

Introduction Date: July 12, 2022

Plan Commission
Public Hearing Date: July 11, 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 1.46 acres from AR/Low Intensity Residential
to C2/Limited Commercial.

Location: 8320 and 8326 Illinois Road/SR 14

Reason for Request: To allow for the construction of a Wings Etc. store and a second retail
building.

Applicant: Wings, Etc.

Property Owner: Martin, Bangert, and Martinez

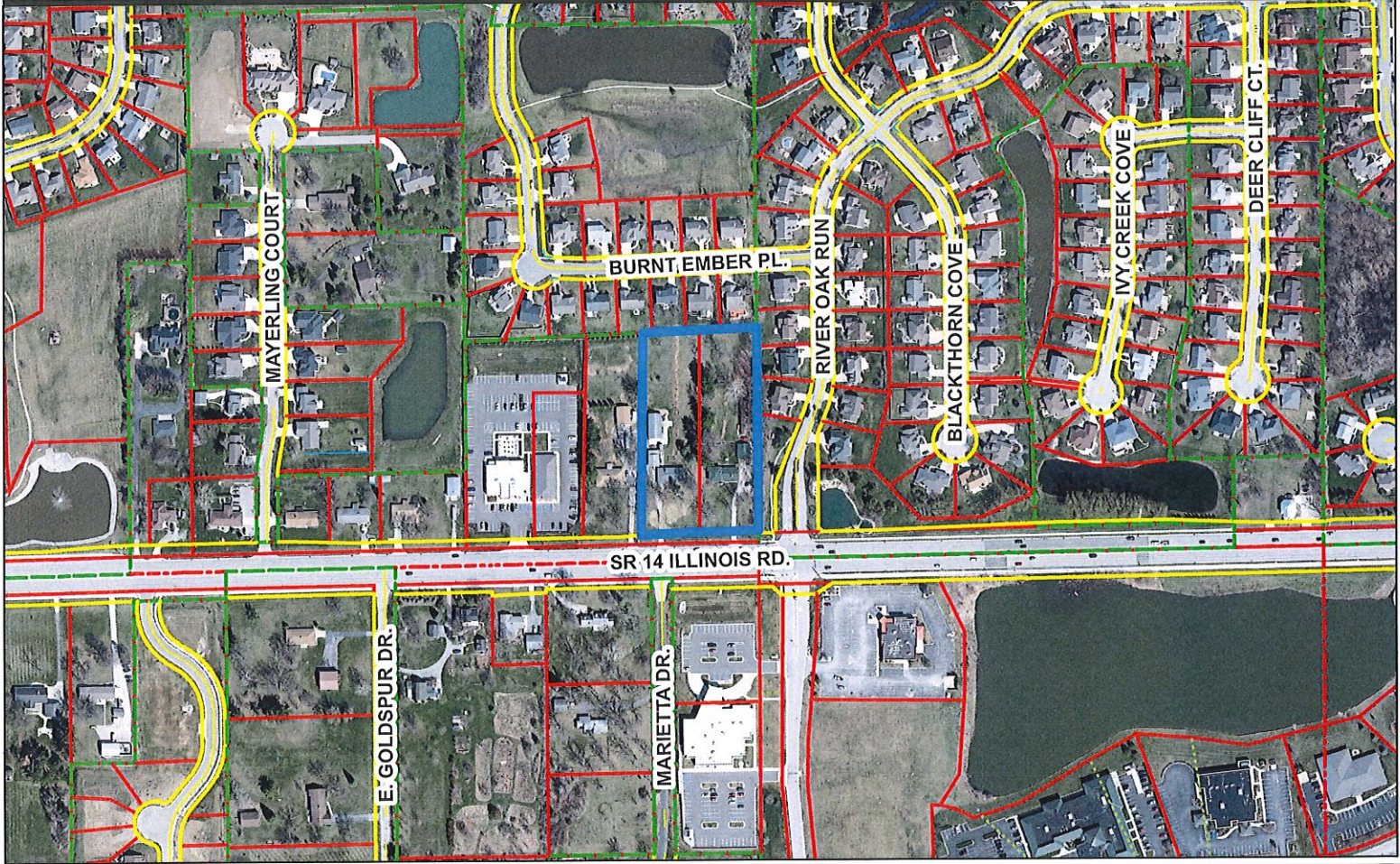
Related Petitions: Primary Development Plan, Wings, Etc.

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

Effect of Non-Passage: The property will remain zoned AR/Low Intensity Residential, which
would not permit any commercial uses, but would allow the continuation
of single family homes and low-intensity agricultural uses.

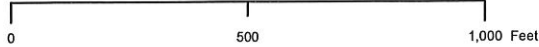


Rezoning Petition REZ-2022-0035 and Primary Development Plan PDP-2022-0021 - Wings, Etc.



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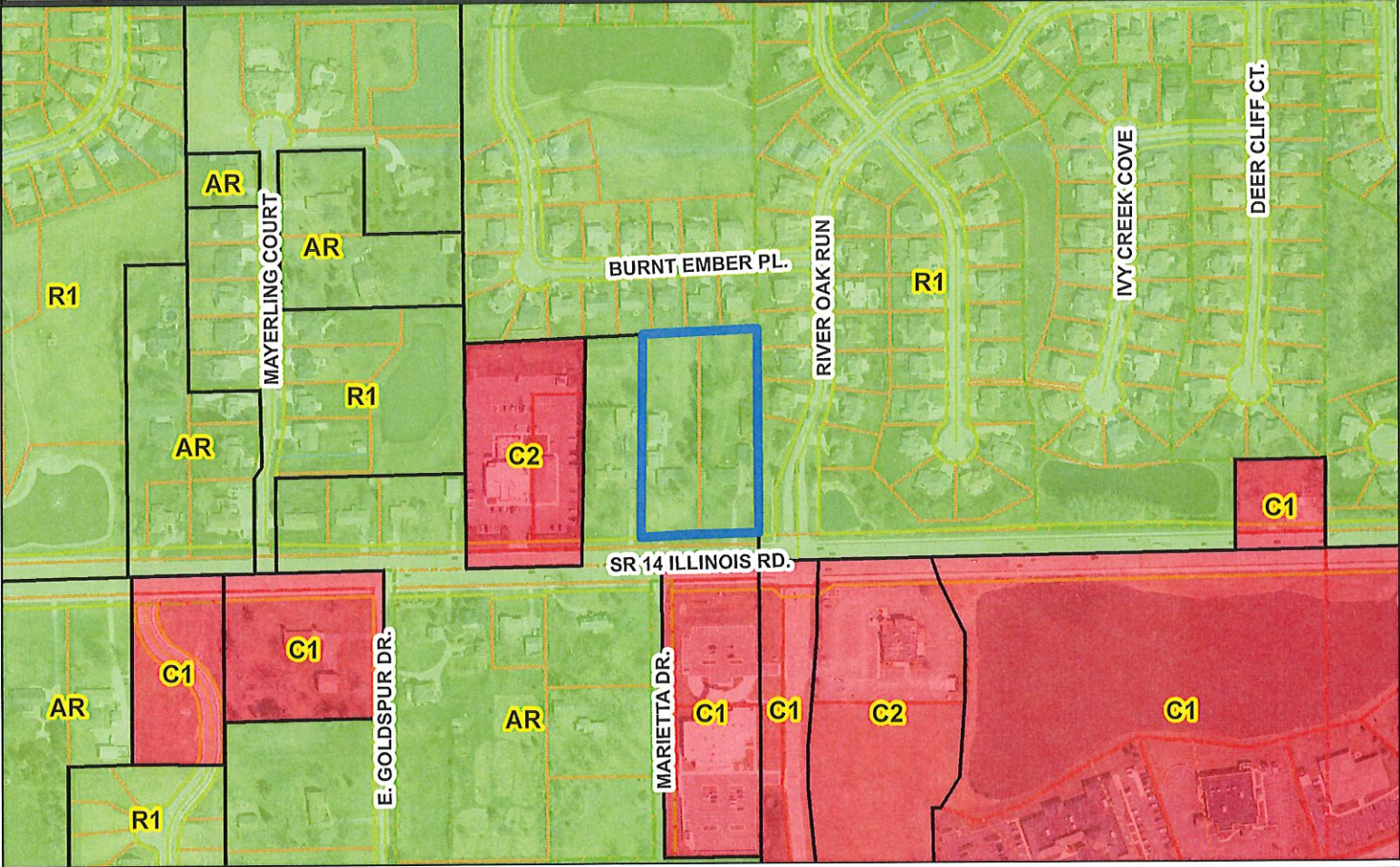
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State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 6/28/2022



1 inch = 300 feet

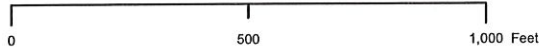


Rezoning Petition REZ-2022-0035 and Primary Development Plan PDP-2022-0021 - Wings, Etc.



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1 inch = 300 feet

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Trinity Development Group, Dan Brekke
Address 7337 West Jefferson Blvd, Suite 200
City Fort Wayne State IN Zip 46804
Telephone 260.432.6001 E-mail dbrekke@wingsetc.net

Contact Person
Contact Person Crystal Welsh, Abonmarche Consultants
Address 927 S. Harrison Street, Suite 300,
City Fort Wayne State IN Zip 46802
Telephone 574-314-1027 E-mail cwelsh@abonmarche.com

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

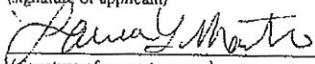
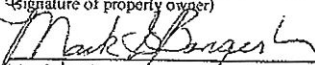
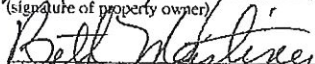
Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 8320 & 8326 Illinois Road
Present Zoning AR Proposed Zoning C-2 Acreage to be rezoned 2.9 acres
Proposed density 0.69 units per acre units per acre
Township name Aboite Township section # 0002
Purpose of rezoning (attach additional page if necessary) is to allow for the development of two restaurants
Sewer provider City of Fort Wayne Water provider City of Fort Wayne

Filing Requirements
Applications will not be accepted unless the following filing requirements are submitted with this application. Please refer to checklist for applicable filing fees and plan/survey submittal requirements.

- ☐ Applicable filing fee
- ☐ Applicable number of surveys showing area to be rezoned (plans must be folded)
- ☐ Legal Description of parcel to be rezoned
- ☐ Rezoning Questionnaire (original and 10 copies) County Rezoning Only

I/we understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan Commission as those provisions, procedures and policies related to the handling and disposition of this application; that the above information is true and accurate to the best of my/our knowledge; and that I/we agree to pay Allen County the cost of notifying the required interested persons at the rate of \$0.85 per notice and a public notice fee of \$50.00 per Indiana code.

Trinity Development Group LLC.

(printed name of applicant)	(signature of applicant)	(date)
Laura Martin 8326 Illinois Rd		6-3-2022
(printed name of property owner)	(signature of property owner)	(date)
Mark Bangert 8326 Illinois Rd		6/3/22
(printed name of property owner)	(signature of property owner)	(date)
Beth Martinez 8320 Illinois Rd		6/6/22
(printed name of property owner)	(signature of property owner)	(date)

Received <u>June 7</u>	Receipt No. <u>140462</u>	Hearing Date <u>7/11/22</u>	Petition No. <u>REZ-2022-0025</u>
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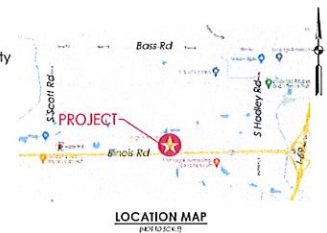
Part of the SW Qtr Section 2, T-30-N, R-11-E, Aboite Township, Allen County



Project Summary
Torings: Current AR Proposed C2
Paving: 121 Total Spaces Paving Setback: 5'

Utility Service Providers	
<u>Electric</u> American Electric Power	<u>Water Utility</u> City of Fort Wayne
<u>Sewer/Septic</u> Aqua Indiana	<u>Gas Utility</u> NIPSCO Gas
<u>Telephone</u> Century Link	<u>Cable TV</u> Comcast Cable
<u>Telephone</u> Frontier	

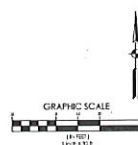
Landscape Requirements	
North Property Line	Building Buffer Yard Code B-2
East Property Line	Building Buffer Yard Code B-2
South Property Line	Parking Area Buffer Yard Code P-4
West Property Line	Parking Area Buffer Yard Code P-4
Parking Area	Parking Area Buffer Yard Code P-4



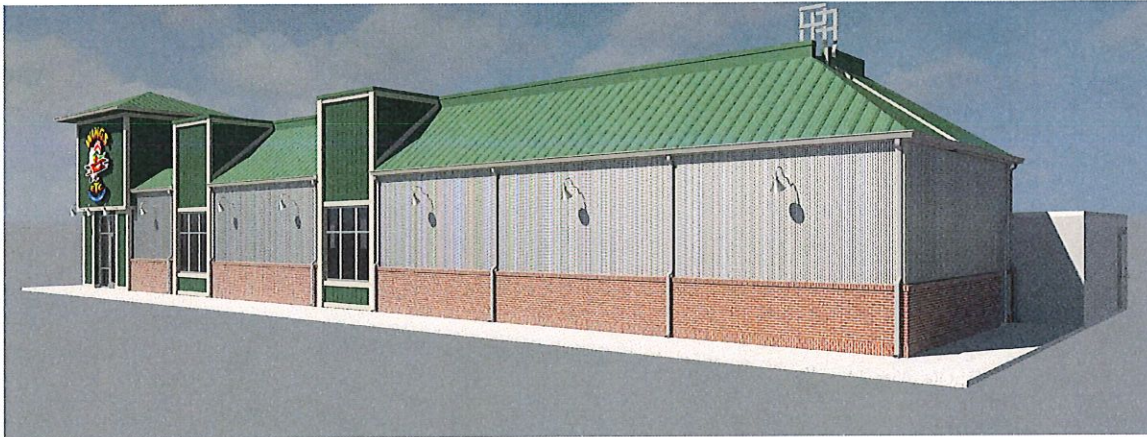
VICINITY MAP
(NOT TO SCALE)

DEVELOPER
WINGS ETC
7337 W. Jefferson Blvd.
Fort Wayne, IN 46804
(260)-432-6001

ENGINEER
ABONMARCHE
927 S. Harrison Street, Suite 300
Fort Wayne, IN 46802
1.260.218.2500



EX-100	CEN
EX-100	JM
EX-100	JM
EX-100	JW
EX-100	6-7-2022
EX-100	A5-HOTD
EX-100	22-0788
EX-100	



NOTES:
 1. ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO THE DISCRETION OF THE ARCHITECT.
 2. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE DIMENSIONS AND SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE DIMENSIONS AND SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE DIMENSIONS.



GERALD P. NOE ARCHITECT

WEST VIRGINIA REG. NO. 4096

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 SPARTANBURG, SC 29302
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 mail@gpnaarch.com

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DESIGNED BY: GPN
 APPROVED BY: GPN

2-10-2021
 ISSUED FOR CONTRACTOR PRICING

REVISIONS:

No. Description Date By

CLIENT NAME:
 VIENNA WINGS 1020 LLC

1009 9th Street East
 Vienna, West Virginia 26109

PROJECT NAME:



101 SAND CREEK RD., VIENNA, WV 26109

SHEET TITLE:

PERSPECTIVE VIEWS

PROJECT NO. 20-305

DATE 02/19/21

SHEET NO.

A-201

SHEET 3 OF 25

REZONING FACT SHEET

Petition #REZ-2022-0035 Z-22-07-11 Project Start: June 2022

APPLICANT:	Wings, Etc.
REQUEST:	Rezone property from AR/Low Intensity Residential to C2/Limited Commercial for 2 commercial buildings.
LOCATION:	8320 and 8326 Illinois Road/W SR 14, northwest corner of its intersection with River Oak Run (Section 2 of Aboite Township)
LAND AREA:	1.46 acres
PRESENT ZONING:	AR/Low Intensity Residential
PROPOSED ZONING:	C2/Limited Commercial
COUNCIL DISTRICT:	4-Jason Arp
ASSOCIATED PROJECT:	Primary Development Plan, Wings, Etc.
SPONSOR:	City of Fort Wayne Plan Commission

11 July 2022 Plan Commission Public Hearing

- One resident spoke in support at the hearing.
- Three residents spoke their concerns at the hearing.
- Paul Sauerteig and Ryan Neumeister were absent.

18 July 2022 Business Meeting

Plan Commission Recommendation: Do Pass w/Written Commitment

- A motion was made by Paul Sauerteig and seconded by Rick Briley to return the ordinance to Common Council with a DO PASS recommendation with a Written Commitment for their final decision.
- Ryan Neumeister was absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
August 3, 2022

PROJECT SUMMARY

The petitioner requests a rezoning from AR/Low Intensity Residential to C2/Limited Commercial to permit a 2 building development including a new store for Wings, Etc. The property currently exists of two parcels with single family residential homes. The proposed rezoning and development site is surrounded by single family homes to the north, east, and west. The property to the south across Illinois/W SR14 is a Parkview Health property. The property has been used residentially since at least the 1960's and was an agriculture field prior to that according to GIS aerial imagery.

There have been several successful rezoning petitions along Illinois Road. Parkview Health was rezoned to C1/Professional Office and Personal Services for medical uses south of this site at the intersection of Glencarin Boulevard and Illinois/W SR 14. A rezoning to C2/Limited Commercial was approved west of the site for a restaurant and physical therapy office. Additional commercial rezoning petitions were approved even further west.

Staff had met with the applicant's representative about this project and raised several concerns about the rezoning proposal. Staff encouraged the applicant to collaborate with the adjacent landowner to the west to rezone all three parcels at once for a more comprehensive development. A proposal that includes all the adjacent parcels in this stretch of Illinois/ W SR 14 would allow for a centralized access point and connectivity connect to existing commercial development. It would also allow for a cohesive screening and buffering plan and address any neighbor concerns with one proposal. Even without a development plan for the west property, commitments could be made to address any concerns and ensure a compatible development. Staff is generally supportive of planned commercial development along this transitioning corridor with these items addressed. The applicant has submitted a Written Commitment that addresses uses, and following the public hearing, they agreed to add language to address future access to the west property owner, as well as enhanced landscaping to screen the northern properties.

The proposed site plan includes two commercial structures. One is labeled *Proposed Wings Etc. Building 4830 sq ft*. the other is labeled *Proposed Building 1440 sq ft*. The maximum building height in the proposed zoning district is 40 feet which is the same as what is permitted for the adjacent residentially zoned properties. Parking is located to the north, east, south and between the buildings. Stormwater detention and landscaping is proposed on the north side of the property, directly adjacent to Whispering Meadows and The Falls of Beaver Creek neighborhoods. Staff understands that the applicant had a neighborhood meeting to meet with neighbors about the proposed rezoning and development plan. The dumpster location meets the required setbacks and will need to be screened appropriately according to the Zoning Ordinance. A single access point is shown on Illinois Road/W SR 14 directly across from Marietta Drive.

PUBLIC HEARING SUMMARY:

Presenter: Crystal Welsh, representing Wings Etc., presented the project to the Plan Commission, as outlined above.

Public Hearing Comments:

Tom Brewer, 8416 Illinois Road (property owner to the west) supports the project with the agreement for future access, and a 6-foot fence.

Steve Maulden, 7935 Purple Sage Cove – Appreciates the agreements the applicant has made but still has concerns about traffic.

Cheryl Ryan, 1022 River Oak Run - Appreciates the cooperation of the applicant but has concerns about the unknow tenant in the eastern building and would prefer it to be zoned C1. Also has concerns about traffic.

Kevin Bond, 624 Blackthorn Cove – Concerned about traffic and the pedestrian trail, and would like a smaller sign on the building that faces the residential subdivision.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Primary Development Plan PDP-2022-0021 – Wings, Etc.

APPLICANT:	Wings, Etc.
REQUEST:	Rezone property from AR/Low Intensity Residential to C2/Limited Commercial; Approve a primary development plan to allow 2 commercial buildings; approve waiver to reduce landscaping along the west side.
LOCATION:	8320 and 8326 Illinois Road/W SR 14, northwest corner of its intersection with River Oak Run (Section 2 of Aboite Township)
LAND AREA:	1.46 acres
PRESENT ZONING:	AR/Low Intensity Residential
PROPOSED ZONING:	C2/Limited Commercial

Pursuant to I.C. 36-7-4-1405, the Commission shall review a development plan to determine if the development plan:

- (1) is consistent with the comprehensive plan; and
- (2) satisfies the development requirements specified in the Zoning Ordinance under sections 1402 and 1403 of I.C. 36-7-4.

The Plan Commission finds that the proposed development satisfies the following stated Objectives of the Fort Wayne Comprehensive Plan:

LU3. Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;

LU5. Encourage sustainable growth and quality development, revitalization and redevelopment by increasing and enhancing connectivity;

LU5.C Encourage development proposals that provide neighborhood commercial, civic, institutional and other similar uses, designed to allow adequate access for pedestrians and bicycles, in close proximity to housing.

LU6. Encourage carefully planned sustainable growth and coordinated development by encouraging mixed land uses.

LU6.D Support carefully planned, coordinated, compatible mixed-use development.

LU8. Use land resources efficiently by encouraging compact development alternatives in infill areas where utilities and other infrastructure currently exist.

The project site is within the conceptual development map growth area and is currently served by public infrastructure. The general area has a mixture of commercial, business, and residential uses. This proposal will continue the trend of developing properties in a mixed use development pattern while maintaining compatibility with adjacent properties.

§157.301(4)(a)(i) states that:

After public hearing on the Primary Development Plan, the Commission shall approve or deny the application. The Commission shall approve the Primary Development Plan if it determines that the application meets the development requirements of the applicable zoning district. Pursuant to I.C. 36-7-4-1402 and 1403, the Fort Wayne Zoning Ordinance sets forth the development requirements that must be satisfied before the Commission may approve a development plan.

The Plan Commission finds that the Primary Development Plan of Wings, Etc. meets the following development requirements as set forth in §157.404:

- (1) §157.404(D) Access
- (2) §157.404(E) Airport Overlay Districts
- (3) §157.404(G) Easements
- (4) §157.404(H) Floodplain
- (5) §157.404(K) Natural Site Features
- (6) §157.404(M) Parking
- (7) §157.404(N) Pedestrian Circulation
- (8) §157.404(O) Residential impact mitigation
- (9) §157.404(P) Sanitary Sewer
- (10) §157.404(Q) Signs
- (11) §157.404(R) Site Lighting
- (12) §157.404(S) Storm Drainage
- (13) §157.404(T) Street Lighting
- (14) §157.404(U) Vehicle Circulation and Streets
- (15) §157.404(V) Water

The development plan does not meet the following development standards: §157.408(I) Zoning District Standards. However, pursuant to I.C. 36-7-1402(b)(4) and §157.405(B)(1), the Plan Commission may grant waivers of certain standards listed in §157.404 (C) through (W) so long as it finds:

- (a) The waiver or modification is in conformance with the purposes and intent of this ordinance along with the objectives and policies of the Comprehensive Plan;
- (b) The applicant has submitted adequate evidence to demonstrate that the requested waiver or modification will not have a significant impact on contiguous residential properties; and;
- (c) The failure to grant the requested waiver would result in practical difficulties in the use of the property for the proposed development.

In accordance with I.C. 36-7-1402(b)(4) and §157.405(B)(1) the Plan Commission approves the following waiver:

A waiver of §157.408(I) Zoning District Standards: to allow a reduced landscape standard along the west side of the property. The applicant proposed a P-3 standard instead of a P-2 standard. The ordinance requires a P-2 standard since the parking area is adjacent to a residential zoning district.

Based on the Findings of Fact, the Site Committee recommends approval of the Primary Development Plan of Wings Etc., subject to the following conditions:

1. Approval of Rezoning Petition REZ-2022-0035 will be received by Common Council.
2. Secondary development plans will be submitted through the site plan routing review process.
3. The following waiver is approved:
 - a. Landscaping along west property line is permitted at a P3 Landscape standard. Including a 6 foot privacy fence.
4. 8 foot privacy fencing is required along the north and east side of the property with evergreen trees between the fence and neighboring properties.
5. Applicant will contact Plan Commission staff prior to submitting for site plan routing to ensure all primary conditions have been met.
6. Dumpster screening is required, to be constructed with either a wood or a vinyl fence or masonry structure and will include a gate.
7. All site and building lighting will use sharp cut-off type fixtures as defined by the Illuminating Engineers Society of North America (IESNA).
8. Prior to permit approval the applicant must submit a recorded ingress/egress easement that allows access for 8416 W SR 14 unto 8326 W SR 14 as generally proposed at the public hearing.

These findings approved by the Fort Wayne Plan Commission on July 18, 2022.

Benjamin J. Roussel

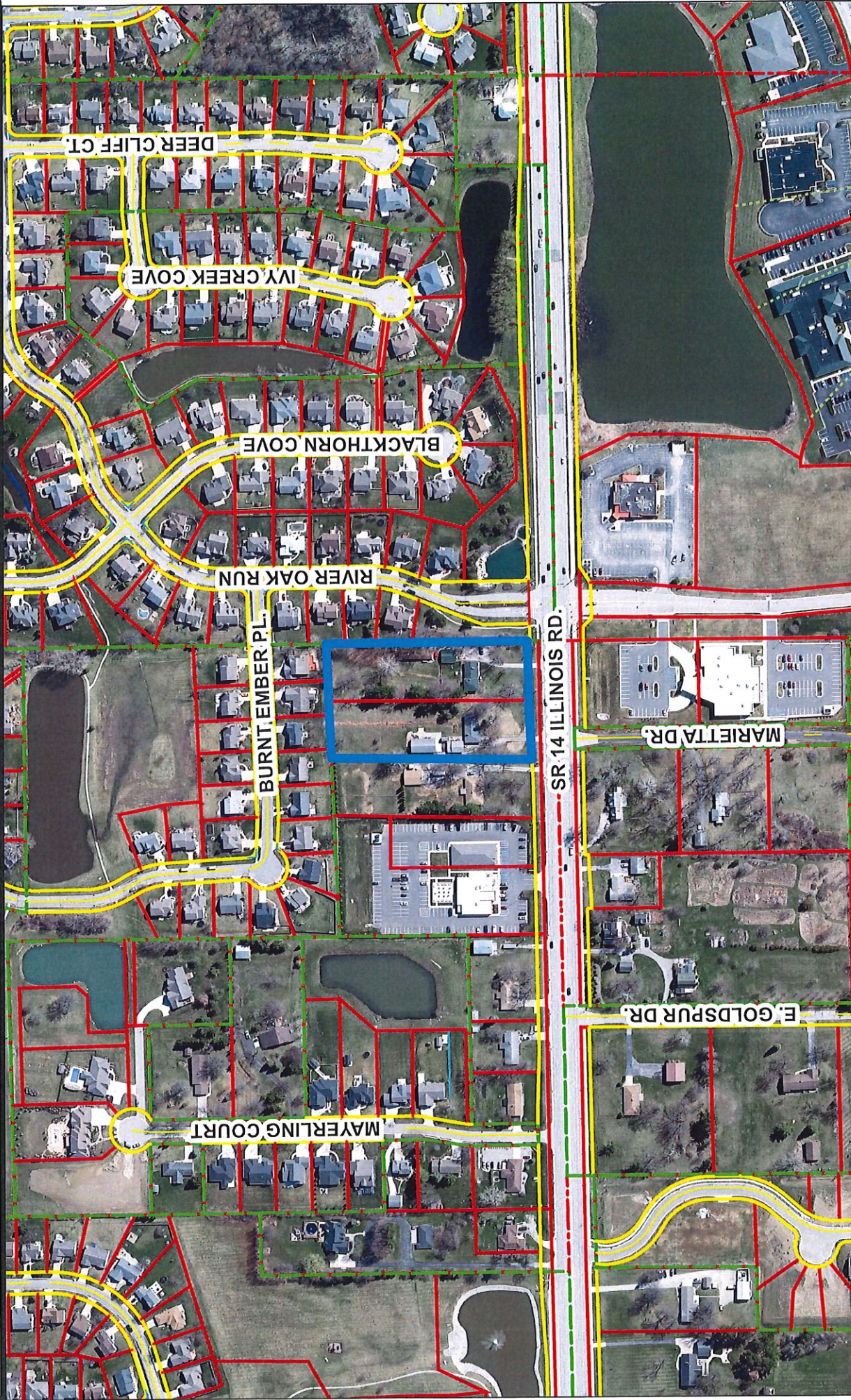
Benjamin J. Roussel

Executive Director

Secretary to the Commission



Rezoning Petition REZ-2022-0035 and Primary Development Plan PDP-2022-0021 - Wings, Etc.



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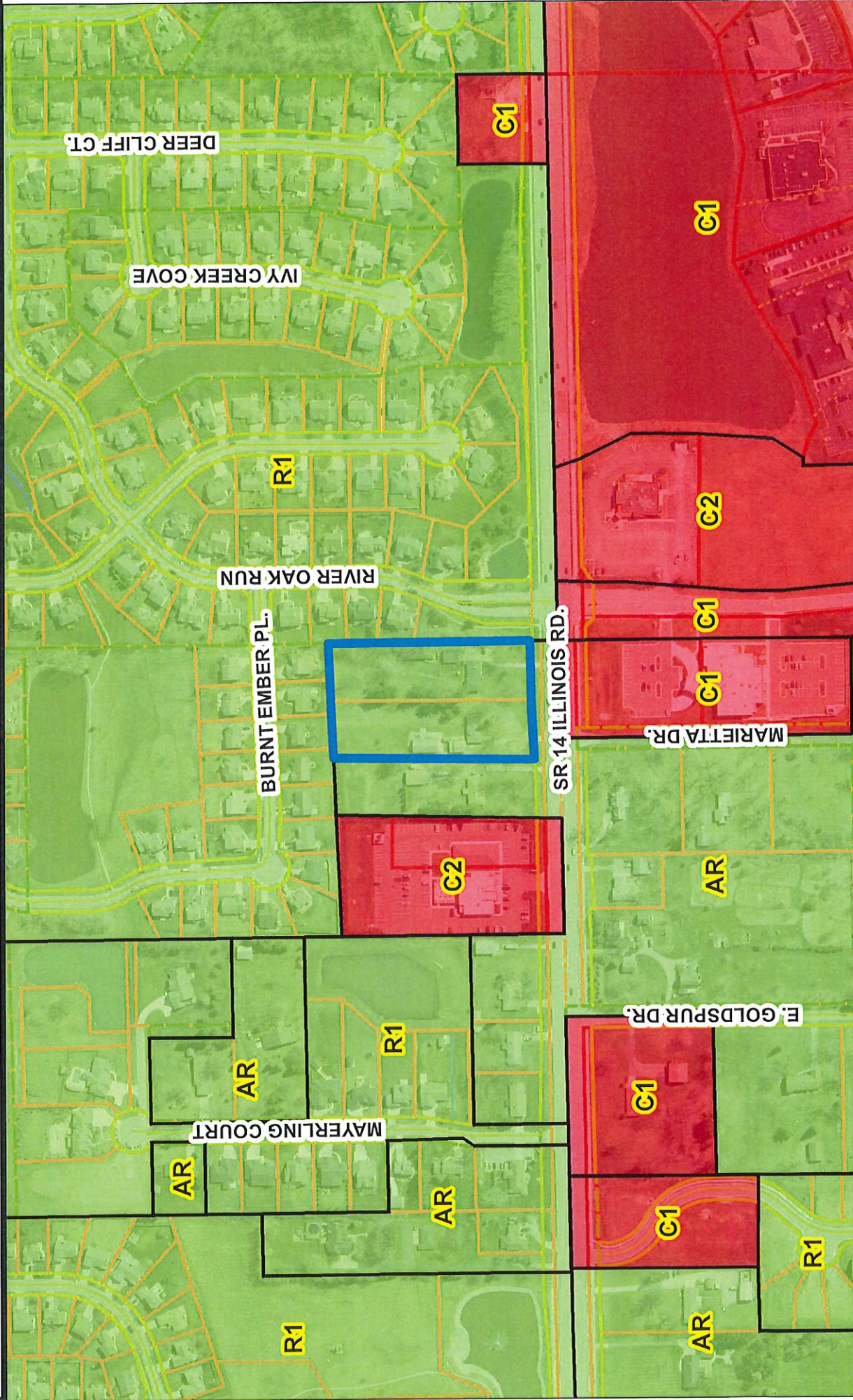
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1 inch = 300 feet



Rezoning Petition REZ-2022-0035 and Primary Development Plan PDP-2022-0021 - Wings, Etc.



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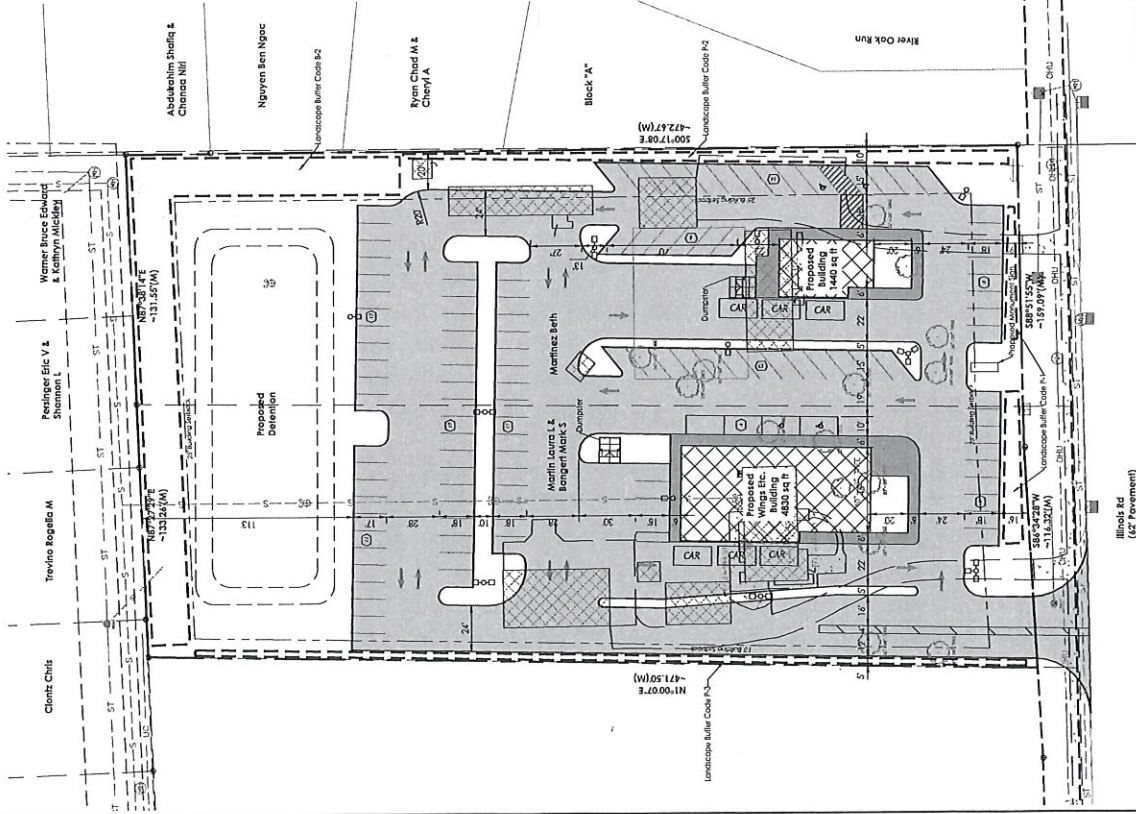


1 inch = 300 feet

PRIMARY DEVELOPMENT PLAN

WINGS ETC.

Part of the SW Qtr Section 2, T-30-N, R-11-E, Aboite Township, Allen County



LEGEND

(M)	Number of Proposed Parking Spaces
(A)	ADA International Symbol of Accessibility, Right Blue
(S)	Asphalt Pavedment
(G)	Grass
(W)	Side Walk
(L)	Site Lighting

Project Summary

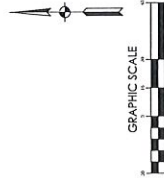
Zoning:	Current AR
Proposed:	Proposed C2
Parking:	114 Total Spaces Parking Setback: 5'

Utility Service Providers

Electric	American Electric Power
Water Utility	City of Fort Wayne
Gas Utility	NIPSCO Gas
Sanitary Sewer	Aqua Indiana
Telephone	CenturyLink
Cable TV	Comcast Cable
Telephone	CenturyLink
Telephone	CenturyLink

Landscape Requirements

North Property Line	Building Buffer Yard Code S-2
East Property Line	Building Buffer Yard Code S-2
South Property Line	Parking Area Buffer Yard Code P-1
East Property Line	Parking Area Buffer Yard Code P-2
West Property Line	Parking Area & Building Buffer Yard Code P-3
Parking Area	Parking Area Buffer Yard Code P-4



LOCATION MAP
(NOT TO SCALE)

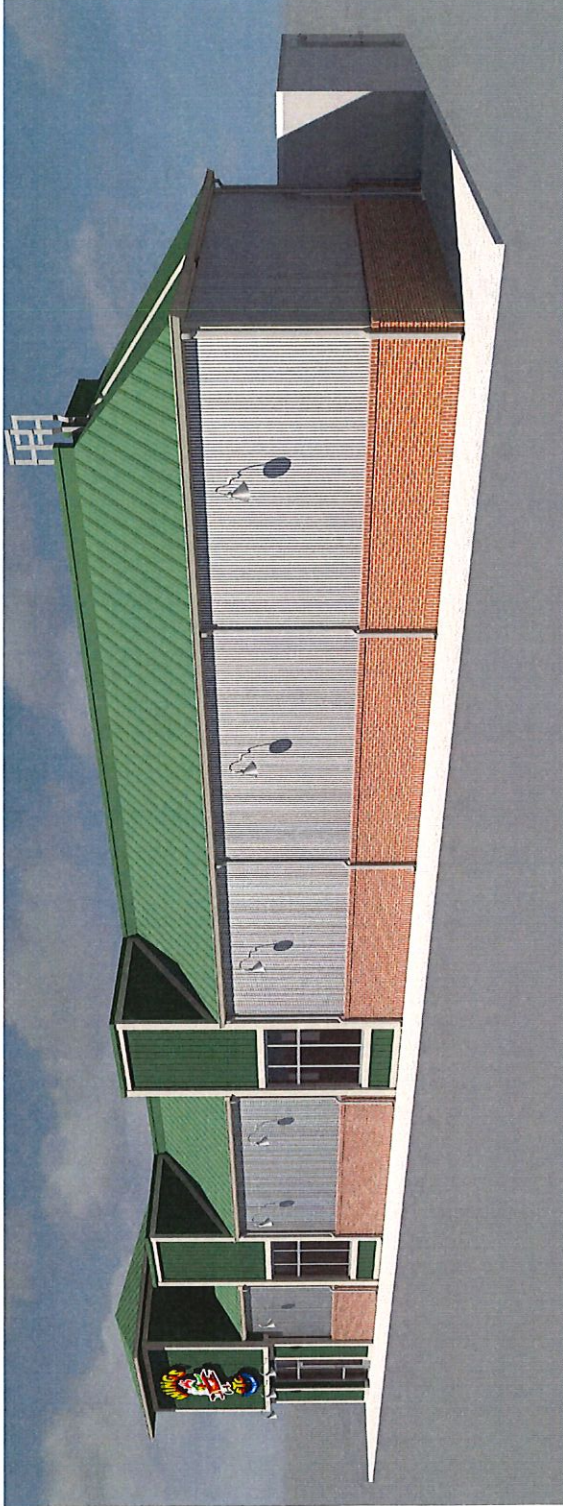


VICINITY MAP
(NOT TO SCALE)

DEVELOPER
WINGS ETC
7337 W. Jefferson Blvd.
Fort Wayne, IN 46804
(260) 432-6001

ENGINEER
ABONMARCHÉ
927 S. Harrison Street, Suite 300
Fort Wayne, IN 46802
T 260.218.2500

DRAWN BY:	CEH
DESIGNED BY:	JAV
IN REVIEW:	JAV
DATE REVIEW:	JAV
DATE:	6-7-2022
SCALE:	AS SHOWN
DATE:	6-7-2022
PROJECT NO.:	22-0788



NOTES:
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ONLY, AND MAY NOT CONTRIBUTE TO ANY DELAYS OR COMPLETION OF THE
CONSTRUCTION BUSINESS ON THIS PROJECT.



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ARCHITECT**
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DESIGNED BY: CWN
APPROVED BY: GPN

2-19-2021
ISSUED FOR CONTRACTOR PRICING

REVISIONS:
No. Description Date By

CLIENT NAME:
VIENNA WINGS 1020 LLC
1008 Grand Central Mall
Vienna, West Virginia 25106

PROJECT NAME:
**WINGS WINGS
ETC.
GRILL & RUB**
1020 GRAND CENTRAL MALL
VIENNA, WEST VIRGINIA 25106

SHEET TITLE:
PERSPECTIVE VIEWS

PROJECT NO. 30-305
DATE 02/19/21
SHEET NO.

A-201

SHEET 9 OF 25

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made as of this ____th day of July, 2022, by Trinity Development Group, LLC (or assigned entity) an Indiana limited liability company (herein, the "Declarant"), under the following circumstances:

WITNESSETH:

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

WHEREAS, Declarant has submitted a Zoning Map Amendment Application with the City of Fort Wayne Plan Commission ("Plan Commission"), bearing number _____ (the "Zoning Application") and a Primary Development Plan Application (the "Development Plan Application") (the Zoning Application and the Development Plan Application are sometimes referred to herein collectively as the "Applications") with respect to its proposed development of the Real Estate; and

WHEREAS, pursuant to the Zoning Application, Declarant has requested the Real Estate be rezoned to C2 pursuant to the City of Fort Wayne Zoning Ordinance (the "Ordinance"); and

WHEREAS, Declarant, in conjunction with the Applications, has submitted this Commitment to the Plan Commission, voluntarily, pursuant to section 157.503 of the Ordinance and Indiana Code 36-7-4-1015, for the purpose of limiting certain impacts and certain uses arising from development upon the Real Estate.

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. **Use Limitations.** The Declarant agrees that the following uses shall be prohibited upon the Real Estate:

- a. Animal Kennel
- b. Automobile Sales/Rental
- c. Childcare Center
- d. Correctional Service Facility

- e. Dormitory (including fraternity or sorority houses
- f. Motel
- g. Theater
- h. Zoo

2. Permits. No permits shall be issued under the Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County Recorder. The Declarant shall deliver to the Zoning Administrator and the Plan Commission an executed and recorded copy of this Commitment.

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.

8. Amendment or Termination. Modification or amendment of this Commitment may only be made in accordance with I.C. § 36-7-4-1015, as such statute may be amended from time to time.

9. 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.

10. 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.

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

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

DECLARANT:

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 _____, 2022, personally appeared _____, an Authorized Member of _____, and acknowledged 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

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

LEGAL DESCRIPTION

REAL ESTATE DESCRIPTION PER TITLE COMMITMENT

TRACT 1.

COMMENCING AT A POINT IN THE NORTH PROPERTY LINE AT INDIANA STATE ROAD NUMBER 14 AS NOW ESTABLISHED, SAID POINT BEING 1183.3 FEET EAST OF THE WEST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 30 NORTH, RANGE 11 EAST IN ALLEN COUNTY, INDIANA; THENCE NORTHERLY A DISTANCE OF 495.18 FEET TO A FENCE; THENCE EASTERLY ALONG SAID FENCE A DISTANCE OF 133.44 FEET, THENCE SOUTHERLY ALONG A FENCE OF DISTANCE OF 498.0 FEET TO A POINT ON THE NORTH PROPERTY LINE OF SAID ROAD 14, SAID POINT OF BEING 137.9 FEET EAST OF THE POINT OF BEGINNING, CONTAINING 1.532 ACRES.

EXCEPT:

A PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 2. TOWNSHIP 30 NORTH, RANGE 11 EAST, ALLEN COUNTY INDIANA, AND BEING THE PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT MADE AS EXHIBIT "B" DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION, DESIGNATED AS POINT "505" ON SAID PARCEL PLAT; THENCE NORTH 0 DEGREES 55 MINUTES 04 SECONDS EAST 40.00 FEET (12.192 METERS) ALONG THE WEST LINE OF SAID QUARTER SECTION TO THE NORTH BOUNDARY OF S.R. 14 (ALSO KNOWN AS ILLINOIS ROAD); THENCE SOUTH 89 DEGREES 49 MINUTES 46 SECONDS EAST 1,184.85 FEET (361.142 METERS) (1,183.3 FEET BY INSTRUMENT NO. 200043506) ALONG THE BOUNDARY OF SAID S.R. 14 TO THE SOUTHWEST CORNER OF THE GRANTOR'S LAND AND THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH 1 DEGREE 32 MINUTES 37 SECONDS EAST 25.62 FEET (7.809 METERS) ALONG THE WEST LINE OF THE GRANTOR'S LAND; THENCE SOUTH 89 DEGREES 49 MINUTES 46 SECONDS EAST 137.67 FEET (41.962 METERS) TO THE EAST LINE OF THE GRANTOR'S LAND AT POINT "16-48" DESIGNATED ON SAID PARCEL PLAT; THENCE SOUTH 1 DEGREE 01 MINUTES 07 SECONDS WEST 25.62 FEET (7.809 METERS) ALONG SAID EAST LINE TO THE NORTH BOUNDARY OF SAID S.R. 14; THENCE NORTH 89 DEGREES 49 MINUTES 46 SECONDS WEST 137.90 FEET (42.032 METERS) ALONG THE BOUNDARY OF SAID S.R. 14 TO THE POINT OF BEGINNING AND CONTAINING 0.081 ACRES (0.0328 HECTARES). MORE OR LESS.

TRACT II:

COMMENCING AT A POINT ON THE NORTH RIGHT OF WAY LINE OF INDIANA ROAD NUMBER 14 AS NOW ESTABLISHED, SAID POINT BEING 1045.4 FEET EAST OF THE WEST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 2,

TOWNSHIP 30 NORTH, RANGE 11 EAST IN ALLEN COUNTY, INDIANA; THENCE NORTHERLY AT A DISTANCE 492.34 FEET TO A FENCE; THENCE EASTERLY A DISTANCE OF 133.44 FEET ALONG SAID FENCE THENCE SOUTHERLY A DISTANCE OF 95.18 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID ROAD 14, SAID POINT BEING 137.9 FEET EAST OF THE POINT OF BEGINNING; THENCE WEST ALONG THE NORTH RIGHT OF WAY LINE OF SAID STATE ROAD 14 TO THE POINT OF BEGINNING.

EXCEPTING THE FOLLOWING:

A PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 2.
TOWNSHIP 30 NORTH, RANGE 11 EAST, ALLEN COUNTY INDIANA, DESCRIBED AS THE FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION, THENCE NORTH 0 DEGREES 55 MINUTES 04 SECONDS EAST 40.00 FEET (12.192 METERS) ALONG THE WEST LINE OF SAID QUARTER SECTION TO THE NORTH BOUNDARY OF S.R. 14 (ALSO KNOWN AS ILLINOIS ROAD); THENCE SOUTH 89 DEGREES 49 MINUTES 46 SECONDS EAST 1,046.95 FEET (319.100 METERS) (1,045.4 FEET BY DEED RECORDED 619 PAGE 523) ALONG THE BOUNDARY OF SAID S.R. 14 TO THE SOUTHWEST CORNER OF THE GRANTOR'S LAND AND THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH 2 DEGREES 04 MINUTES 29 SECONDS EAST 20.97 FEET (6.392 METERS) ALONG THE WEST; THENCE NORTH 87 DEGREES 52 MINUTES 48 SECONDS EAST 116.56 FEET (35.527 METERS) TO THE EAST LINE; THENCE SOUTH 1 DEGREES 32 MINUTES 37 SECONDS WEST 25.62 FEET (7.809 METERS) ALONG SAID EAST LINE TO THE NORTH BOUNDARY OF SAID S.R. 14; THENCE NORTH 89 DEGREES 49 MINUTES 46 SECOND WEST 137.90 FEET (42.032 METERS) ALONG THE BOUNDARY OF SAID S.R. 14 TO THE POINT OF BEGINNING AND CONTAINING 0.075 ACRES (0.0304 HECTARES). MORE OR LESS.