

1 #REZ-2015-0059

2 BILL NO. Z-15-11-22

3 ZONING MAP ORDINANCE NO. Z- 28-15

4 AN ORDINANCE amending the City of Fort Wayne  
5 Zoning Map No. N-26 (Sec. 25 of Washington Township)

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

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

11 Part of the Northwest Quarter of Section 25, Township 31 North, Range 12 East, In Allen County,  
12 Indiana, more particularly described as follows:

13 Commencing at a point on the center line of Parnell Avenue, said point being 21.15 feet north and 9  
14 feet west of the center of Section 25, Township 31 North, Range 12 East, Allen County, Indiana;  
15 thence North, 1,022.40 feet along the centerline of Parnell Avenue; thence North 86 degrees 20  
16 minutes 40 seconds West (North 86 degrees 32 minutes West, Deed) a distance of 748.10 feet to the  
17 point of beginning; thence continuing North 86 degrees 20 minutes 40 seconds West, 550.40 feet;  
18 thence North 00 degrees 17 minutes 00 seconds East, 180.00 feet; thence South 89 degrees 59  
19 minutes 30 seconds East, 420.50 feet; thence South 32 degrees 31 minutes 15 seconds East, 49.60  
20 feet; thence South 11 degrees 41 minutes 38 seconds East, 94.40 feet; thence South 45 degrees 27  
21 minutes 59 seconds East, 115.16 feet to the point of beginning. Containing 2.11 acres more or less.

22 TOGETHER WITH:

23 Part of the Northwest Quarter of Section 25, Township 31 North, Range 12 East, in Allen County,  
24 Indiana, more particularly described as follows:

25 Commencing at a point on the centerline of Parnell Avenue, said point being 21.15 north and 9 feet  
26 west of the center of Section 25, Township 31 North, Range 12 East, Allen County, Indiana; thence  
27 North 1,022.40 feet along the centerline of Parnell Avenue; thence North 86 degrees 20 minutes 40  
28 seconds West (North 86 degrees 32 minutes West, deed) a distance of 496.50 feet to the point of  
29 beginning; thence North 02 degrees 28 minutes 45 seconds East, 196.15 feet to the point of curvature  
30 of a non-tangent curve to the left; thence Northwesterly, Northerly, and Northeasterly, along said curve  
having a radius of 50.00 feet, an arc length of 125.66 feet and subtended by a chord bearing North 14  
degrees 35 minutes 55 seconds West, a chord length of 95.41 feet; thence North 64 degrees 29  
minutes 16 seconds West 303.68 feet; thence South 25 degrees 25 minutes 00 seconds West, 208.71  
feet; thence South 32 degrees 31 minutes 15 seconds East, 49.60 feet; thence South 11 degrees 41  
minutes 38 seconds East, 94.40 feet; thence South 45 degrees 27 minutes 59 seconds East, 115.16  
feet; thence South 86 degrees 20 minutes 40 seconds East, 251.60 feet to the point of beginning.  
Containing 2.61 acres, more or less. Subject to easements, rights-of-way, covenants and restrictions  
of record.

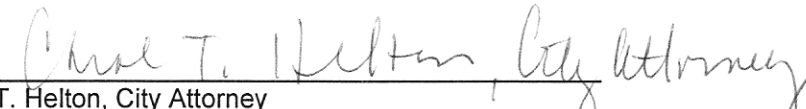
and the symbols of the City of Fort Wayne Zoning Map No. N-26 (Sec. 25 of Washington  
Township), as established by Section 157.082 of Title XV of the Code of the City of Fort  
Wayne, Indiana is hereby changed accordingly.

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SECTION 2. 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  
*by LES*

City of Fort Wayne Common Council  
**DIGEST SHEET**

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**Department of Planning Services**

Title of Ordinance:       Zoning Map Amendment  
Case Number:            REZ-2015-0059  
Bill Number:             Z-15-11-22  
Council District:         3-Tom Didier

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Introduction Date:        November 24, 2015  
  
Plan Commission  
Public Hearing Date:      December 7, 2015  
  
Next Council Action:     Ordinance will return to Council after recommendation by the  
Plan Commission

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Synopsis of Ordinance:    To rezone approximately 4.73 acres of property from SC-Shopping Center  
and RP-Planned Residential to C2-Limited Commercial  
  
Location:                 1007 Memorial Way  
  
Reason for Request:      To bring the zoning of the property into a single district that is compatible  
with surrounding zoning and uses.  
  
Applicant:                Shook, Mahoney-Shook, Glaser and Rusher  
  
Property Owner:         Shook, Mahoney-Shook, Glaser and Rusher

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Related Petitions:        none

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Effect of Passage:        Property will be rezoned to the C2-Limited Commercial zoning district  
which will permit a variety of commercial and retail uses.  
  
Effect of Non-Passage:    The property will remain zoned for residential and commercial uses under  
the multiple family and shopping center designations.

**Department of Planning Services  
Rezoning Petition Application**

**Applicant** Shook Michael Andrew & Mahoney-Shook Kelli J UND 65% INT & Glaser Robyn K UND 25% INT & Rusher Christeen UND 10% INT  
 Address 6211 Highgate Place  
 City Fort Wayne State IN Zip 46815  
 Telephone 260-415-3690 E-mail kjmahoney17@comcast.net

**Contact Person**  
 Contact Person Brandon Downey  
 Address PO Box 8169  
 City Fort Wayne State IN Zip 46898  
 Telephone 260-410-0575 E-mail brandon.downey@svn.com

*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 1007 Memorial Way  
 Present Zoning RP/SC Proposed Zoning C2 Acreage to be rezoned 4.73  
 Proposed density \_\_\_\_\_ units per acre  
 Township name Washington Township section # 25  
 Purpose of rezoning (attach additional page if necessary) \_\_\_\_\_  
 To bring all 4.73 acres to a more suitable zoning classification for future development other than current RP and SC \_\_\_\_\_  
 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.

*See Exhibit A*

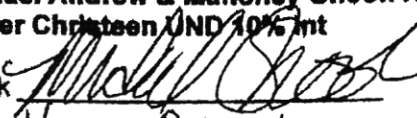
_____	_____	_____
(printed name of applicant)	(signature of applicant)	(date)
_____	_____	_____
(printed name of property owner)	(signature of property owner)	(date)
_____	_____	_____
(printed name of property owner)	(signature of property owner)	(date)
_____	_____	_____
(printed name of property owner)	(signature of property owner)	(date)

Received <u>11-3-15</u>	Receipt No. <u>119477</u>	Hearing Date <u>12/7/15</u>	Petition No. <u>REZ-2015-0059</u>
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Exhibit A

Printed name of property owner: **Shook Michael Andrew & Mahoney-Shook Kelli J UND 65%  
int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int**

Signature of applicant: Michael Andrew Shook

 11-2-15

Signature of applicant: Kelli J Shook-Mahoney

 11-2-15

Signature of applicant: Robyn Glaser

 11-2-15

Signature of applicant: Christeen Rusher

 11-2-15

Printed name of property owner: Michael Andrew Shook

Printed name of property owner: Kelli J Shook-Mahoney

Printed name of property owner: Robyn Glaser

Printed name of property owner: Christeen Rusher



Project boundaries represented by bold colored lines are for representational purposes only.



# Rezoning Petition REZ-2015-0059

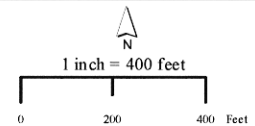


Project boundaries represented by bold colored lines are for representational purposes only.

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

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

Date: 11/17/2015



## WRITTEN COMMITMENT

**THIS WRITTEN COMMITMENT** (“Commitment”) is made by **Shook Michael Andrew & Mahoney-Shook Kelli J UND 65% int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int** (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 4.73 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.



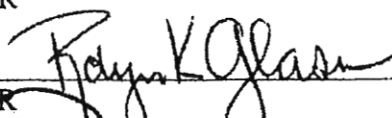
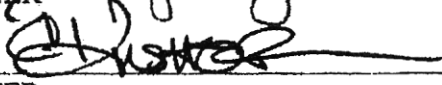
**NOW, THEREFORE**, in consideration of the above and foregoing recitals, Declarant hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon Declarant and all future owners of the Real Estate, and all lessees of all or any portion of the Real Estate.

1. Prohibited Uses. The following uses shall be prohibited upon the Real Estate as permitted in the C4/Intensive Commercial zoning district §157.213: TO BE DETERMINED
2. Maintenance. The Real Estate, and any parking lot or landscaping located thereon, shall be maintained in good order and repair so as to cause the least possible amount of interference, inconvenience or annoyance to any adjacent owner of residential property.
3. Outside Storage. Outside storage of trash and trash receptacles must be visually screened on three sides with a wood or vinyl fence or masonry structure, with a gate enclosure on the fourth side, or located within a larger fenced area, so long as the fence is a minimum of six (6) feet in height and solid board construction.
4. Landscaping and Buffering. A buffer area will be maintained along the boundaries of the Real Estate and will include: Based on recommendations by Landscape professionals at the time of development All landscaping planted and fencing installed by Declarant and/or Applicant upon the Real Estate shall be maintained, watered and fertilized by Declarant and/or Applicant pursuant to a commercially reasonable standard for similar landscaping and fencing in Allen County, Indiana and shall be replaced within a commercially reasonable time in the event of decay, disease or death of said landscaping or vandalism, casualty or other non-repairable condition to said fencing.

6. Signage. There may be located upon the Real Estate (a) one (1) ground mounted sign not to exceed eight (8) feet in height and eighty (80) square feet in area, which sign shall be located along the Memorial Way access drive at the entrance to the Real Estate. No temporary signs (including but not limited to banners, mobile or trailer signs, commercial flags, pennants, or balloons) shall be permitted.
7. Lighting. Site lighting shall be of a type to minimize light pollution onto any adjacent property by utilizing only full “cut-off” style wall pack lighting fixtures. Maximum pole height, including fixture and base shall not exceed 25 feet.
9. 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.
10. 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.
11. 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.
12. Effective Date. This Commitment shall be deemed effective upon the Commitment being duly recorded in the Office of the Recorder of Allen County, Indiana.
13. Statutory Authority. This Commitment is pursuant to I.C. 36-7-4-1015.
14. 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.
15. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

“DECLARANT”

**Shook Michael Andrew & Mahoney-Shook Kelli J UND 65%  
int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int**

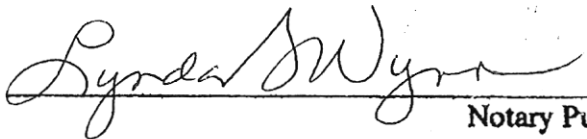
  
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STATE OF INDIANA     )  
                                   ) SS:  
 COUNTY OF ALLEN     )

Before me, the undersigned, a Notary Public, in and for said County and State, this 2 day of NOV 2015, personally appeared **Shook Michael Andrew & Mahoney-Shook Kelli J UND 65% int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int** and acknowledged the execution of the foregoing.

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

LYNDA S. WYNN  
 Notary Public # 594733  
 Allen County, Indiana  
 My Commission Expires September 28, 2016

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: 9/28/16

My County of Residence: Allen

Pursuant to IC 36-2-11-15(d): 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.

Prepared by: ~~XXXXXXXX~~  
 When recorded, return to: Department of Planning Services

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

SOUTHWEST PORTION OF 4.73 MEMORIAL WAY LAND

PART OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE CENTER LINE OF PARNELL AVENUE, SAID POINT BEING 21.15 FEET NORTH AND 9 FEET WEST OF THE CENTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, ALLEN COUNTY, INDIANA; THENCE NORTH, 1022.4 FEET ALONG THE CENTERLINE OF PARNELL AVENUE; THENCE NORTH 86 DEGREES 20 MINUTES 40 SECONDS WEST (NORTH 86 DEGREES 32 MINUTES WEST, DEED) A DISTANCE OF 748.10 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 86 DEGREES 20 MINUTES 40 SECONDS WEST, 550.40 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 00 SECONDS EAST, 180.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 30 SECONDS EAST, 420.50 FEET; THENCE SOUTH 32 DEGREES 31 MINUTES 15 SECONDS EAST, 49.60 FEET; THENCE SOUTH 11 DEGREES 41 MINUTES 38 SECONDS EAST, 94.40 FEET; THENCE SOUTH 45 DEGREES 27 MINUTES 59 SECONDS EAST, 115.16 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.11 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS OF RECORD.

NORTHEAST PORTION OF 4.73 MEMORIAL WAY LAND

PART OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE CENTER LINE OF PARNELL AVENUE, SAID POINT BEING 21.15 FEET NORTH AND 9 FEET WEST OF THE CENTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, ALLEN COUNTY, INDIANA; THENCE NORTH, 1022.4 FEET ALONG THE CENTERLINE OF PARNELL AVENUE; THENCE NORTH 86 DEGREES 20 MINUTES 40 SECONDS WEST (NORTH 86 DEGREES 32 MINUTES WEST, DEED) A DISTANCE OF 496.5 FEET TO THE POINT OF BEGINNING; THENCE NORTH 02 DEGREES 28 MINUTES 45 SECONDS EAST, 196.15 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY, ALONG SAID CURVE HAVING A RADIUS OF 50.00 FEET, AN ARC LENGTH OF 125.66 FEET AND SUBTENDED BY A CHORD BEARING NORTH 14 DEGREES 35 MINUTES 55 SECONDS WEST, A CHORD LENGTH OF 95.41 FEET; THENCE NORTH 64 DEGREES 29 MINUTES 16 SECONDS WEST, 303.68 FEET; THENCE SOUTH 25 DEGREES 25 MINUTES 00 SECONDS WEST, 208.71 FEET; THENCE SOUTH 32 DEGREES 31 MINUTES 15 SECONDS EAST, 49.60 FEET; THENCE SOUTH 11 DEGREES 41 MINUTES 38 SECONDS EAST, 94.40 FEET; THENCE SOUTH 45 DEGREES 27 MINUTES 59 SECONDS EAST, 115.16 FEET; THENCE SOUTH 86 DEGREES 20 MINUTES 40 SECONDS EAST, 251.60 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.61 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS OF RECORD.

Public Hearing Date, if applicable 12-7-2015

Read the first time in full and on motion by Councilman Clym Hines  
Read the second time by title and referred to the Resolutions  
Committee. Read the third time in full and on motion by Councilman  
Clym Hines, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>8</u>	_____	_____	<u>1</u>
BENDER	<u>/</u>	_____	_____	_____
CRAWFORD	<u>/</u>	_____	_____	_____
DIDIER	<u>/</u>	_____	_____	_____
HARPER	_____	_____	_____	<u>/</u>
HINES	<u>/</u>	_____	_____	_____
JEHL	<u>/</u>	_____	_____	_____
PADDOCK	<u>/</u>	_____	_____	_____
SHOAFF	<u>/</u>	_____	_____	_____
SMITH	<u>/</u>	_____	_____	_____

DATED: 12-22-15 Michelle D. Chambers  
MICHELLE D. CHAMBERS, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
(ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE  
(RESOLUTION) NO. Z-28-15 on the 22nd day of  
December, 2015

ATTEST: Michelle D. Chambers John N. Crawford  
MICHELLE D. CHAMBERS, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day  
of December, 2015, at the hour of 1:00 o'clock PM, E.S.T.

Michelle D. Chambers  
MICHELLE D. CHAMBERS, CITY CLERK

Approved and signed by me this 28<sup>TH</sup> day of December  
2015, at the hour of 9:00 O'clock AM, E.S.T.

Thomas C. Henry  
THOMAS C. HENRY, MAYOR

**BILL NO. Z-15-11-22**

**REPORT OF COMMITTEE ON REGULATIONS**

**December 22, 2015**

*Glynn Hines, Chair  
Mitch Harper, Co-Chair  
All Council Members*

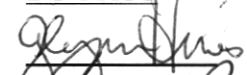
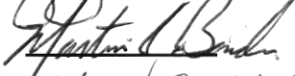
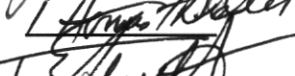
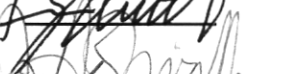
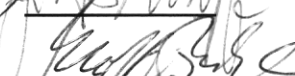
**AN ORDINANCE** amending the City of Fort Wayne Zoning Map No. N-26 (Sec. 25 of Washington Township). The location is at 1007 Memorial Way. **COMMITTEE ON REGULATIONS HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said ordinance

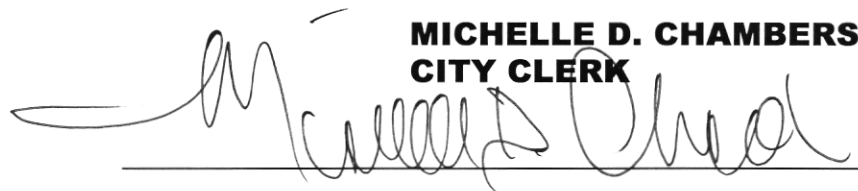
**DO PASS**

**DO NOT PASS**

**ABSTAIN**

**NO REC**

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**MICHELLE D. CHAMBERS  
CITY CLERK**