

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

#REZ-2018-0024

BILL NO. Z-18-05-05

ZONING MAP ORDINANCE NO. Z-19-18

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. P-02 (Sec. 7 of Adams Township)**

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

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

Lot Number 72 in Fletcher's Addition, an amended plat of Fletcher's Out Lot, to the
City of Fort Wayne, according to the plat thereof, recorded in Deed Record 61, pages
285-286, in the Office of the Recorder of Allen County, Indiana.

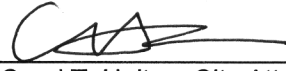
and the symbols of the City of Fort Wayne Zoning Map No. P-02 (Sec. 7 of Adams
Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
Wayne, Indiana is hereby changed accordingly.

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.

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

3
4 
5 _____
6 Council Member

7 APPROVED AS TO FORM AND LEGALITY:

8 
9 _____
10 Carol T. Helton, City Attorney

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant DFW, LLC.
 Address P.O. Box 6096
 City Ft. Wayne State Indiana Zip 46896
 Telephone 260-740-9897 E-mail felicia2177@yahoo.com

Contact Person
 Contact Person Deloris Wallace
 Address P.O. Box 6096
 City Ft. Wayne State IN Zip 46896
 Telephone 260-740-9897 E-mail felicia2177@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 1904 MAUMEE AVE
 Present Zoning R2 Proposed Zoning E3 Acreage to be rezoned _____
 Proposed density 1 units per acre
 Township name Wayne Township section # 7
 Purpose of rezoning (attach additional page if necessary) for future RESTAURANT
 Sewer provider City Utilities Water provider City Utilities

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 \$500.00
 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.

Deloris Wallace Deloris Wallace 3/27/18
 (printed name of applicant) (signature of applicant) (date)
POWERS HAMBURGERS LLC Bennett Eckhard 4-7-18
 (printed name of property owner) (signature of property owner) (date)
 _____ (signature of property owner) _____ (date)
 _____ (signature of property owner) _____ (date)

| Received | Receipt No. | Hearing Date | Petition No. |
|----------|-------------|--------------|---------------|
| 3-28-18 | 126474 | 5/14/18 | REZ-2018-0024 |

PLAT OF SURVEY

DONOVAN ENGINEERING, INC.

3521 LAKE AVENUE, SUITE 2
FORT WAYNE, INDIANA 46805
260.424.7418

www.donovan-eng.com

GREGORY L. ROBERTS PLS S0548 IN

KENNETH W. HARRIS PLS 29500021 IN

MICHAEL W. HARRIS PLS 21100018 IN

Parcel B:

Lots number 72 and 73 in Fletcher's Addition, an amended plat of Fletcher's Out Lot, to the City of Fort Wayne, according to the plat thereof, recorded in Deed Record 61, pages 285 - 286, in the Office of the Recorder of Allen County, Indiana.

Parcel C:

Part of Fletcher's Out Lot One (1) and of the space North thereof, in the City of Fort Wayne, Allen County, Indiana, described as follows:

Commencing at the intersection of the South line of Maumee Avenue, the West line of Fletcher Avenue, running thence South along the West line of Fletcher Avenue a distance of seventy-five (75) feet, thence in a Southwesterly direction to intersect a line drawn parallel to and 50 feet distant from the aforesaid West line of Fletcher Avenue at a point 118 feet South of the South line of said Maumee Avenue; thence North and along said parallel line 118 feet to the South line of Maumee Avenue; thence in a Southeasterly direction along the South line of Maumee Avenue 51 and 25/100 feet to the place of beginning, which real estate is more completely described in the certificate of survey made by A. K. Hofer, Registered Engineer, on October 30, 1959, as follows:

Part of Fletcher's Out Lot No. 1 in the West Half of the Northwest Quarter of Section 7, Township 30 North, Range 13 East, in Allen County, Indiana, by metes and bounds described as follows; to-wit:

Commencing on the West line of Fletcher Avenue, in the City of Fort Wayne, Indiana, at a point situated 75.4 feet North of the Southeast corner of said Out Lot; thence running North on the said Avenue West line 44.2 feet to the Northeast corner of said Out Lot as situated on the section line between Section 6 and 7, of the Township and Range aforesaid; thence West on the line aforesaid as situated coincidental with the North line of said Out Lot No. 1, a distance of 50 feet; thence South on a line parallel to the aforesaid Fletcher Avenue line, a distance of 72.05 feet to the North line of the former right of way on the Indiana Service Corporation; thence Northeastward, a distance of 57.95 feet to the place of beginning; together with a part contiguous to and North of the parcel afore-described, of the Southwest Quarter of Section 6, Township 30 North, Range 13 East, in particular described as follows, to-wit:

Commencing on the West line of Fletcher Avenue in the City of Fort Wayne, Indiana, at the Northeast corner of said Fletcher's Out Lot No. 1, at which point the section line between said Section 7 and 6 intersect the said avenue line; thence running North on the said Avenue line, a distance of 30.8 feet to the South line of Maumee Avenue; thence Northwestward along the aforesaid avenue line, a distance of 51.25 feet to a point situated 50 feet normally distant West of the West line of said Fletcher Avenue, thence Southward on a line parallel to and 50 feet West of the line aforesaid, a distance of 45.95 feet to the section line between section 6 and 7 as situated coincident with the North line of said Out Lot No. 1; thence East on the line aforesaid, a distance of 50.0 feet to the place of beginning at the West line of said Fletcher Avenue; and also

Parcel D:

The East 50 feet of Fletcher's Out Lot Numbered One (1) in the West 1/2 of the Northwest Quarter of Section 7, Township 30 North, Range 13 East, except the South 40 feet thereof and further excepting from said East 50 feet that portion lying within Parcel C.

Job No.: 17-1313

Date: 4-25-17

Job for: POWERS HOLDING

LEGEND

IPF Iron Pin (Rebar) Found
PF Pipe Found
RRF Railroad Spike Found
PKF P.K. Nail Found
MNF Mag Nail Found
MNS Mag Nail Set
IPS 5/8" rebar set w/cap stamped "DEI FIRM #0027"
(M) Measured (P) Plotted
(R) Recorded (C) Calculated

All monuments are at grade except as noted.
All Property line distances are recorded dimensions, except as noted. Monuments found have no documented history except as noted.

L:\AutoCAD\Lot Surveys\72 & 73 Fletcher's & Outlot 1, Maumee Ave.dwg, 4/25/2017 3:17:37 PM

Date of latest field work: 4-24-17



I hereby certify that this survey was completed under my direct supervision and to the best of knowledge and belief was executed according to the requirements set forth in 865 IAC 1-12.



Project Boundaries Represented with Bold Lines are for Representational Purposes Only

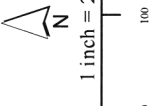
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy or reliability of the information and data displayed, and all liability resulting from any error or omission in this map, North American Datum 1983, State Plane Coordinate System, Indiana East Photos and Contour, Spring 2009 Date: 4/23/2018



Project Boundaries Represented with Bold 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, completeness, or reliability of the information and data herein, and all liability resulting from any error or omission in this map is hereby disclaimed.

©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: 4/23/2018



FACT SHEET

| | |
|---|--|
| Case #REZ-2018-0024 Bill # Z-18-05-05 Project Start: 8 May 2018 | |
| PROPOSAL: | Rezoning Petition REZ-2018-0024 |
| APPLICANT: | DFW, LLC |
| REQUEST: | To rezone property from R2/Two Family Residential to C3/General Commercial to allow for commercial uses on the entirety of the site. |
| LOCATION: | The site is located at the southeast corner of the intersection of Maumee Avenue and Fletcher Avenue. The address of the subject property is 1904 Maumee Avenue (Section 7 of Adams Township). |
| LAND AREA: | Approximately 0.23 acres |
| PRESENT ZONING: | R2/Two Family Residential and C3/General Commercial |
| PROPOSED ZONING: | C3/General Commercial |
| COUNCIL DISTRICT: | 6-Glynn Hines |
| ASSOCIATED PROJECTS: | none |
| SPONSOR: | City of Fort Wayne Plan Commission |

14 May 2018 Public Hearing

- No one spoke at the hearing, in favor or in opposition.
- All members were present

21 May 2018 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

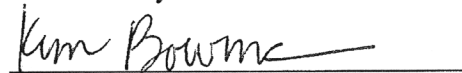
A motion was made by Justin Shurley and seconded by Billy Davenport to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

6-0 MOTION PASSED

- Connie Haas Zuber, Shan Gunawardena, and Paul Sauerteig were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
1 June 2018

Reviewed by:



Kim Bowman
Executive Land Use Director

PROJECT SUMMARY

The petitioner requests a rezoning from R2/Two Family Residential for the eastern half of a commercial property. The existing building at 1904 Maumee is a 900 square foot (approx.) restaurant, currently not in use. At one time this was a Powers Hamburgers restaurant, though it has recently been another brand. The applicant has a land contract with Powers for the building and parking lot. The purpose of the rezoning is that the parking lot is still zoned R2/Two Family Residential, even though it has been used as a parking lot for over 40 years. The applicant intends to reopen a restaurant to serve the area, especially the nearby apartments and students at the Indiana Tech campus.

The property is on the eastern edge of an extensive area of commercial zoning, including C3/General Commercial and C4/Intensive Commercial. There is also C3 zoning directly northeast of the property. Staff discussed the inclusion of the building property, which is C3/General Commercial, and rezoning all of it to C2/Limited Commercial, which would allow the restaurant and parking lot. The current owner of the property (Powers Hamburgers, LLC), did not desire to give up some of the commercial flexibility of the C3 district. Staff explained the concern of some of the more intensive outdoor uses and automobile-related uses in the C3 district, and provided a suggested Written Commitment to restrict some of these uses. The current owner has signed this commitment and the restricted uses are listed below:

- a. Prohibited General Commercial Use Categories:
 - i. Automobile service, general

- b. Prohibited Specific Uses: The following specific uses, which are otherwise allowed in the C-1 zoning district, shall be prohibited upon the Real Estate:
 - i. Agricultural equipment sales
 - ii. Agricultural equipment service
 - iii. Automobile auction
 - iv. Automobile body shop
 - v. Automobile detailing or trim shop
 - vi. Automobile maintenance
 - vii. Automobile rental
 - viii. Automobile repair
 - ix. Automobile restoration
 - x. Automobile rustproofing
 - xi. Automobile sales
 - xii. Automobile washing facility
 - xiii. Boat/watercraft sales
 - xiv. Engine repair
 - xv. Gas station
 - xvi. Manufactured home sales
 - xvii. Motor vehicle rental
 - xviii. Motor vehicle sales
 - xix. Tire sales
 - xx. Truck fueling station
 - xxi. Truck stop

The Comprehensive Plan encourages development that will not adversely affect the current conditions of an area or the character of the current structures in the area. This proposal is to rezone a small parcel of land that adjoins the existing restaurant parcel and will be used as it has been for over 40 years. The proposal represents new investment into the property and provides a lacking retail service to the area.

The comprehensive plan can support this development through the following objectives:

LU1. Encourage carefully planned growth by utilizing the conceptual development map as part of the community's land use decision-making process;

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

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

PUBLIC HEARING SUMMARY:

Presenter: Delores Wallace, future property owner, presented the proposal to the Plan Commission, as outlined above.

Public Comments:

None

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

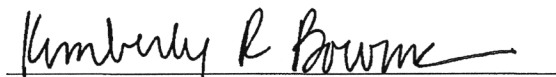
Rezoning Petition REZ-2018-0024

APPLICANT: DFW, LLC
REQUEST: To rezone property from R2/Two Family Residential to C3/General Commercial to allow for commercial uses on the entirety of the site.
LOCATION: The site is located at the southeast corner of the intersection of Maumee Avenue and Fletcher Avenue. The address of the subject property is 1904 Maumee Avenue (Section 7 of Adams Township).
LAND AREA: Approximately 0.23 acres
PRESENT ZONING: R2/Two Family Residential and C3/General Commercial
PROPOSED ZONING: C3/General Commercial

The Plan Commission recommends that Rezoning Petition REZ-2018-0024 be returned to Council with a “Do Pass” recommendation with a Written Commitment after considering the following:

1. Approval of the rezoning request will be in substantial compliance with City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The general area surrounding the site is a mixture of uses, including residential, auto service, commercial, and educational uses, as well as a park and cemetery. Adjacent properties allow equally or more intensive commercial and industrial uses. The following Comprehensive Plan objectives can be supported:
LU1. Encourage carefully planned growth by utilizing the conceptual development map as part of the community’s land use decision-making process;
LU3. Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;
LU8. Use land resources efficiently by encouraging compact development alternatives in infill areas where utilities and other infrastructure currently exist.
2. Approval of the request will not have an adverse impact on the current conditions in the area, or the character of current structures and uses in the area. The site is currently used as a parking lot. A Written Commitment will ensure that no more intensive uses will occur on this property.
3. Approval is consistent with the preservation of property values in the area. This proposal is consistent with or less intensive than adjacent zoning classifications and the applicant intends to re-establish a neighborhood restaurant on this abandoned property.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. This proposal is to allow a long-established use on the property and will not add any uses that require new infrastructure or change traffic patterns.

These findings approved by the Fort Wayne Plan Commission on May 21, 2018.



Kimberly R. Bowman, AICP
Executive Director
Secretary to the Commission

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant DFW, LLC.
 Address P.O. Box 6096
 City Ft. Wayne State Indiana Zip 46896
 Telephone 260-740-9897 E-mail felicia2177@yahoo.com

Contact Person
 Contact Person Deborah Wallace
 Address P.O. Box 6096
 City Ft. Wayne State IN Zip 46896
 Telephone 260-740-9897 E-mail felicia2177@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 1904 MAUMEE AVE
 Present Zoning R2 Proposed Zoning C3 Acreage to be rezoned _____
 Proposed density 1 units per acre
 Township name Wayne Township section # 7
 Purpose of rezoning (attach additional page if necessary) FOR FUTURE RESTAURANT
 Sewer provider City Utilities Water provider City Utilities

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.

- Filing Requirements**
- Applicable filing fee \$500.00
 - 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.

Deborah Wallace Deborah Wallace 3/28/18
 (printed name of applicant) (signature of applicant) (date)
POWERS HAMBURGERS LLC Kenneth Redhead 4-7-18
 (printed name of property owner) (signature of property owner) (date)
 _____ (signature of property owner) _____ (date)
 _____ (signature of property owner) _____ (date)

| Received | Receipt No. | Hearing Date | Petition No. |
|----------------|---------------|----------------|----------------------|
| <u>3-28-18</u> | <u>126474</u> | <u>5/14/18</u> | <u>REZ-2018-0024</u> |

PLAT OF SURVEY

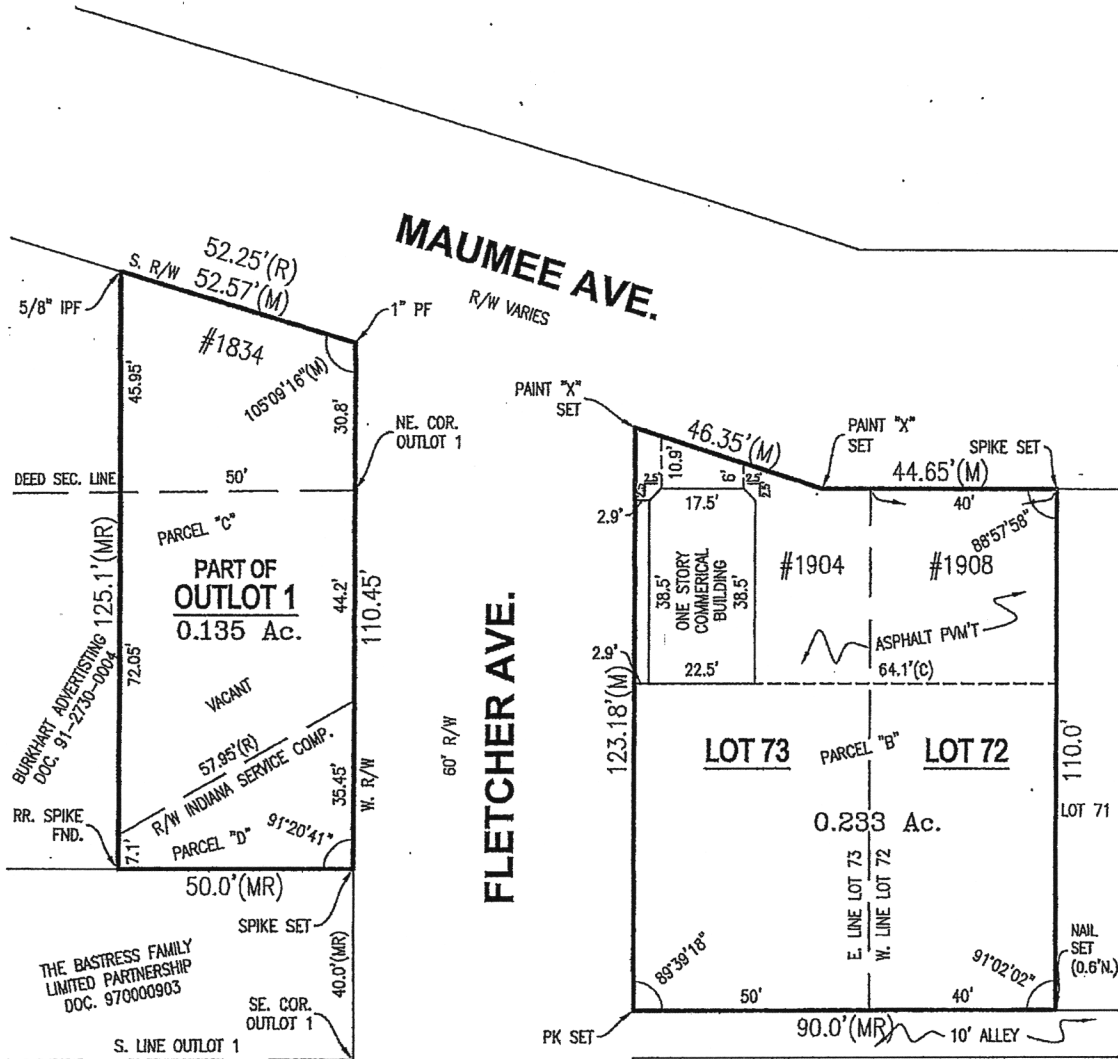
DONOVAN ENGINEERING, INC.
 3521 LAKE AVENUE, SUITE 2
 FORT WAYNE, INDIANA 46805
 260.424.7418
 www.donovan-eng.com

GREGORY L. ROBERTS PLS S0548 IN

KENNETH W. HARRIS PLS 29500021 IN

MICHAEL W. HARRIS PLS 21100018 IN

The undersigned has made a survey of the real estate located in Allen County, Indiana, as shown and described below. The description of the real estate is as follows: SEE ATTACHED SHEET



Job No.: 17-1313
 Job for: POWERS HOLDING

Date: 4-25-17

LEGEND

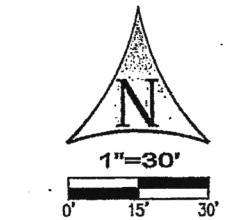
- IPF Iron Pin (Rebar) Found
 - PF Pipe Found
 - RRF Railroad Spike Found
 - PKF P.K. Nail Found
 - MNF Mag Nail Found
 - MNS Mag Nail Set
 - IPS 5/8" rebar set w/cap stamped "DE FIRM #0027"
- (M) Measured (P) Platted
 (R) Recorded (C) Calculated

Date of latest field work: 4-24-17

L:\AutoCAD\Lot Surveys\72 & 73 Fletcher's & Outlot 1, Maumee Ave.dwg, 4/25/2017 3:17:28 PM

All monuments are at grade except as noted.
 All Property line distances are recorded
 dimensions, except as noted. Monuments found
 have no documented history except as noted.

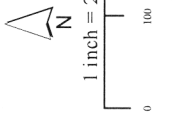
I hereby certify that this survey was completed under my direct supervision and to the best of knowledge and belief was executed according to the requirements set forth in 865 IAC 1-12.





Project Boundaries Represented with Bold Lines are for Representational Purposes Only

Although street 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: 4/23/2018

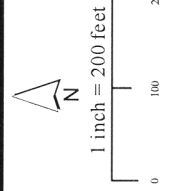




Although every attempt has been made to ensure the accuracy of the information contained herein, the City of Maumee does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 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: 4/23/2018

Project Boundaries Represented with Bold Lines are for Representational Purposes Only



WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (“Commitment”) is made as of this ____ day of May 2018, by **Powers Hamburgers, LLC** (herein the, “Declarant”), under the following circumstances:

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of approximately 0.10 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-2018-0024 (the “Zoning Application”), with respect to the Real Estate;

WHEREAS, pursuant to the Zoning Application, Declarant, has requested the Real Estate be rezoned to C3-General Commercial 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. Use Limitations.
 - a. Prohibited General Commercial Use Categories:
 - i. Automobile service, general
 - b. Prohibited Specific Uses: The following specific uses, which are otherwise allowed in the C-1 zoning district, shall be prohibited upon the Real Estate:
 - i. Agricultural equipment sales
 - ii. Agricultural equipment service
 - iii. Automobile auction

- iv. Automobile body shop
- v. Automobile detailing or trim shop
- vi. Automobile maintenance
- vii. Automobile rental
- viii. Automobile repair
- ix. Automobile restoration
- x. Automobile rustproofing
- xi. Automobile sales
- xii. Automobile washing facility
- xiii. Boat/watercraft sales
- xiv. Engine repair
- xv. Gas station
- xvi. Manufactured home sales
- xvii. Motor vehicle rental
- xviii. Motor vehicle sales
- xix. Tire sales
- xx. Truck fueling station
- xxi. Truck stop

2. 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.

3. 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.

4. 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.

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 which comprises all or a portion of the Real Estate, the Zoning Administrator of the City of Fort Wayne and the Plan Commission.

6. 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.

7. Severability. Each covenant or restriction contained in any paragraph of this Commitment shall be severable and separate, and if any court shall rule that any particular restriction or covenant is unenforceable, such ruling shall not affect the enforceability of any other restriction or covenant under this Commitment, and such other restriction or covenant shall be enforced.

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

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

10. 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"

POWERS HAMBURGERS, LLC

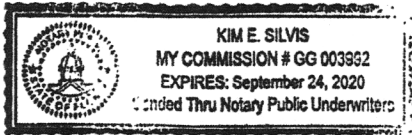
By: Kenneth R Edelbrock
KENNETH R EDELBROCK

Its: SECRETARY

FLORIDA
STATE OF INDIANA)
COLLIER) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this 3RD day of May, 2018, personally appeared Kenneth R Edelbrock, the Secretary of Powers Hamburgers, LLC, and acknowledged the execution of the foregoing.

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



Kim E. Silvis
_____, Notary Public

My Commission Expires: SEPT. 24, 2020

My County of Residence: ~~Allen~~
LEE

THIS INSTRUMENT prepared by Michelle Wood, 200 East Berry Street, Suite 150, Fort Wayne, Indiana 46802.

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. Michelle Wood

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

EXHIBIT "A"

THE EAST HALF (1/2) OF THE NORTHEAST QUARTER (1/4) OF SECTION 10, TOWNSHIP 30 NORTH, RANGE 11 EAST, IN ABOITE TOWNSHIP, CONTAINING 80 ACRES, MORE OR LESS.

EXCEPT: LOT NO. 113 – 9625 ILLINOIS ROAD DESCRIBED AS FOLLOWS: THE WEST 155 FEET OF THE EAST 888.8 FEET OF NORTH 245 FEET OF SECTION 10, TOWNSHIP 30 NORTH, RANGE 11 EAST, ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA, CONTAINING 0.872 ACRES OF LAND MORE OR LESS; THE NORTH 60 FEET AND THE WEST 25 FEET BEING SUBJECT TO LEGAL HIGHWAYS.

EXCEPT: THE WEST 130 FEET OF THE EAST 733.8 FEET OF THE NORTH 245 FEET OF SECTION 10, TOWNSHIP 30 NORTH, RANGE 11 EAST, ALLEN COUNTY, INDIANA, CONTAINING 0.731 ACRES OF LAND MORE OR LESS. THE NORTH 40 FEET SUBJECT TO HIGHWAY RIGHT-OF-WAY.

EXCEPT: THE WEST 130 FEET OF THE EAST 603.8 FEET OF THE NORTH 245 FEET OF SECTION 10, TOWNSHIP 30 NORTH, RANGE 11 EAST, ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA, CONTAINING 0.731 ACRES OF LAND MORE OR LESS. THE NORTH 40 FEET SUBJECT TO HIGHWAY RIGHT-OF-WAY.

EXCEPT: THE EAST HALF OF THE NORTHEAST QUARTER, SECTION 10, TOWNSHIP 30 NORTH, RANGE 11 EAST, EXCEPTING THERE FROM THE FOLLOWING DESCRIBED PARCELS:

THE NORTH 245 FEET OF THE EAST 390 FEET OF THE WEST 835 FEET, SAID EAST HALF OF SAID NORTHEAST QUARTER, SAID SECTION, TOWNSHIP AND RANGE, AND EXCEPTING THEREFROM THE FOLLOWING:

THE WEST 395 FEET OF THE NORTH 435.5 FEET OF SAID EAST HALF OF THE SAID NORTHEAST QUARTER, SAID SECTION, TOWNSHIP AND RANGE.

EXCEPT: THE WEST 186 FEET OF THE NORTH 435.5 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 30 NORTH, RANGE 11 EAST, CONTAINING IN TOTAL 1.86 ACRES OF LAND, MORE OR LESS. SUBJECT TO A ROAD RIGHT-OF-WAY OVER THE NORTH 40 FEET THEREOF, ALSO SUBJECT TO AN EASEMENT FOR UTILITY PURPOSES OVER AND ALONG THE WEST 14 FEET THEREOF.

EXCEPT: A PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 30 NORTH, RANGE 11 EAST, ALLEN COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT MARKED AS EXHIBIT "B" DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION DESIGNATED AS POINT "105" ON SAID PARCEL PLAT; THENCE NORTH 89 DEGREES 01 MINUTES 02 SECONDS WEST, 913.80 FEET (278.526 METERS) (DISTANCE DEDUCED FROM THE PLAT OF DEERFIELD ESTATES-SECTION "C", BOOK 34, PAGE 54) ALONG THE NORTH LINE OF SAID SECTION TO THE NORTHWEST CORNER CARIBOU DRIVE; THENCE SOUTH 0 DEGREES 58 MINUTES 58 SECONDS WEST 40.00 FEET (12.192 METERS) ALONG THE WEST BOUNDARY OF SAID CARIBOU DRIVE TO THE SOUTH BOUNDARY OF S.R. 14 (ALSO KNOWN AS ILLINOIS ROAD) AND THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE CONTINUING SOUTH 0 DEGREES 58 MINUTES 58 SECONDS WEST 42.64 FEET (12.997 METERS) ALONG THE BOUNDARY OF SAID CARIBOU DRIVE TO POINT "1799" DESIGNATED ON SAID PARCEL PLAT; THENCE NORTH 47 DEGREES 00 MINUTES 07 SECONDS WEST 24.52 FEET (7.474 METERS) TO POINT "1798" DESIGNATED ON SAID PARCEL PLAT; THENCE NORTH 88 DEGREES 59 MINUTES 00 SECONDS WEST 191.00 FEET (58.217 METERS) TO EAST LINE OF THE WEST 186 FEET OF

SAID HALF-QUARTER SECTION; THENCE NORTH 0 DEGREES 53 MINUTES 02 SECONDS EAST 26.12 FEET (7.961 METERS) ALONG SAID EAST LINE TO THE SOUTH BOUNDARY OF SAID S.R. 14; THENCE SOUTH 89 DEGREES 01 MINUTES 02 SECONDS EAST 209.26 FEET (63.782 METERS) ALONG THE BOUNDARY OF SAID S.R. 14 TO THE POINT OF BEGINNING AND CONTAINING 0.129 ACRES (0.0522 HECTARES), MORE OR LESS.

EXCEPT: PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 10 TOWNSHIP 30 NORTH, RANGE 11 EAST, ALLEN COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 10, BEING MARKED BY A CAST IRON MONUMENT; THENCE NORTH 89 DEGREES 01 MINUTES 02 SECONDS WEST (DEED BEARING AND BASIS OF ALL BEARINGS IN THIS DESCRIPTION), ON AND ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, BEING WITHIN THE RIGHT-OF-WAY OF ILLINOIS ROAD (STATE ROAD #14), A DISTANCE OF 913.80 FEET TO THE POINT OF INTERSECTION OF SAID NORTH LINE WITH THE NORTHERLY PROJECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARIBOU DRIVE; THENCE SOUTH 00 DEGREES 58 MINUTE 58 SECONDS WEST, ON AND ALONG SAID WESTERLY RIGHT-OF-WAY LINE, AND ITS NORTHERLY PROJECTION, A DISTANCE OF 82.64 FEET TO A #5 REBAR AT THE POINT OF INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF ILLINOIS ROAD (STATE ROAD #14), ALSO BEING THE SOUTHEAST CORNER OF A 0.129 ACRE TRACT OF REAL ESTATE DESCRIBED IN A DEED TO THE STATE OF INDIANA IN DOCUMENT NUMBER 207033373 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, THIS BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 58 MINUTES 58 SECONDS WEST, CONTINUING ON AND ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 15.60 FEET TO A #5 REBAR; THENCE NORTH 88 DEGREES 59 MINUTES 00 SECONDS WEST AND PARALLEL WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF ILLINOIS ROAD (STATE ROAD #14), A DISTANCE OF 32.00 FEET TO A #5 REBAR; THENCE NORTH 00 DEGREES 58 MINUTES 58 SECONDS EAST AND PARALLEL WITH SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 32.00 FEET TO A #5 REBAR ON THE SOUTH LINE OF SAID 0.129 ACRE TRACT, ALSO BEING A POINT ON SAID SOUTHERLY RIGHT-OF-WAY LINE; THENCE SOUTH 88 DEGREES 59 MINUTES 00 SECONDS EAST, ON AND ALONG THE SOUTH LINE OF SAID 0.129 ACRE TRACT AND SAID SOUTHERLY RIGHT-OF-WAY LINE OF ILLINOIS ROAD (STATE ROAD #14), A DISTANCE OF 13.79 FEET TO A #5 REBAR AT A SOUTH CORNER OF SAID 0.129 ACRE TRACT; THENCE SOUTH 47 DEGREES 00 MINUTES 07 SECONDS EAST, CONTINUING ON AND ALONG SAID SOUTH LINE AND SAID SOUTHERLY RIGHT-OF-WAY, A DISTANCE OF 24.52 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.020 ACRES OF LAND, SUBJECT TO ALL EASEMENTS OF RECORD. THIS DESCRIPTION IS BASED ON AN ORIGINAL SURVEY BY SAUER LAND SURVEYING, INC., DATED SEPTEMBER 15, 2008 AND NUMBERED DFS-001.

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2018-0024
Bill Number: Z-18-05-05
Council District: 5-Geoff Paddock

Introduction Date: May 8, 2018

Plan Commission
Public Hearing Date: May 14, 2018 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 0.10 acres of property from R2-Two Family
Residential to C3-General Commercial.

Location: 1904 Maumee

Reason for Request: To redevelop the parcel with a restaurant and bring the existing parking lot
into an appropriate zoning district.

Applicant: DFW, LLC

Property Owner: Powers Hamburgers, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3-General Commercial zoning district,
which will match the adjacent zoning and allow the existing parking lot as
a permitted use.

Effect of Non-Passage: The property containing the parking lot will remain zoned R2-Two Family
Residential, which does not permit a stand-alone parking lot, and will hinder
the redevelopment of the overall parcel.

BILL NO. Z-18-05-05

REPORT OF COMMITTEE ON REGULATIONS

June 12, 2018

Thomas Didier Chair

Paul Ensley Co-Chair

All Council Members

An Ordinance amending the City of Fort Wayne Zoning Map No. P-02 (Sec. 7 of Adams Township)

104 Maumee from R2 - Two Family Residential to C3 – General Commercial

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

~~Thomas Didier~~

Thomas Didier

Paul Ensley
[Handwritten signatures]

[Empty signature lines]

**LANA R. KEESLING
CITY CLERK**

Lana R. Keesling

Public Hearing Date: MAY 14, 2018


Read the first time in full and on motion by Councilman Didier.

Read the second time by title and referred to the Regulations Committee.

Read the third time in full and on motion by Councilman Didier, placed on passage by the following vote:

| <u>TOTAL VOTES</u> | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|--------------------|-------------------------------------|--------------------------|-------------------------------------|-------------------------------------|
| ARP | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| BARRANDA | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| CRAWFORD | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| DIDIER | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ENSLEY | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| FREISTROFFER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| HINES | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| JEHL | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| PADDOCK | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

DATED: June 12, 2018



 LANA R. KEESLING, CITY CLERK

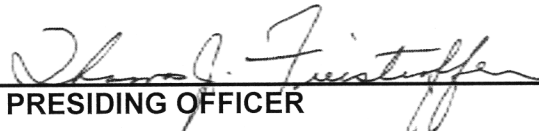
Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Zoning Ordinance No. Z-18-05-05 on the 12th day of June, 2018

ATTEST:



 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER

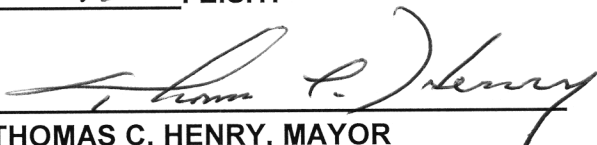
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th of June 2018, at the hour of 10:15 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 13TH day of June

2017, at the hour of 1:00 O'clock Pm. E.S.T.



 THOMAS C. HENRY, MAYOR