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#REZ-2019-0025

BILL NO. Z-19-05-22

ZONING MAP ORDINANCE NO. Z- 19-19

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. J-03 (Sec. 10 of Wayne 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:

Parcel 1: Lots Numbered 1, 2, 3, and 6 all in Dreisbach's First Addition to the City of Fort Wayne, Indiana, according to the plat thereof, recorded in Plat Book 11, page 3, in the Office of the Recorder of Allen County, Indiana; Excepting therefrom that part taken for the widening of Brooklyn Avenue, as described in Declaratory Resolution No. 1203-1967.

Parcel 2: Lot Number 4 Dreisbach's First Addition to the City of Fort Wayne except that part taken for the widening of Brooklyn Avenue, as described in Declaratory Resolution No. 1203 and 1204-1967.

and the symbols of the City of Fort Wayne Zoning Map No. J-03 (Sec. 10 of Wayne 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.

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


Council Member

APPROVED AS TO FORM AND LEGALITY:


Carol T. Helton, City Attorney

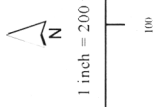


Rezoning Petition REZ-2019-0025 - 2001 Brooklyn Ave



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, Kansas East
 Photo of Google Earth, Spring 2009
 Date: 5/17/2019



1 inch = 200 feet

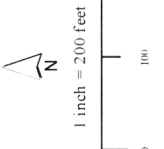


Rezoning Petition REZ-2019-0025 - 2001 Brooklyn Ave



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 Date: 5/17/2019



**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant National Oil & Gas, Inc.
 Address PO Box 476
 City Bluffton State IN Zip 46714
 Telephone 260-824-2220 E-mail tmoser@natoil.com

Contact Person
 Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
 Address 4211 Clubview Drive
 City Fort Wayne State IN Zip 46804
 Telephone 260-602-8000 E-mail smf@smfklaw.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 2001 Brooklyn Avenue, Ft. Wayne, IN 46802
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.37
 Proposed density 1 units per acre
 Township name Wayne Township section # 10
 Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Fort Wayne Zoning Ordinance.
 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.

National Oil & Gas, Inc., by Trout Moser, President *Trout Moser* 4/23/19
 (printed name of applicant) (signature of applicant) (date)
 National Oil & Gas, Inc., by Trout Moser, President *Trout Moser* 4/23/19
 (printed name of property owner) (signature of property owner) (date)
 _____ (signature of property owner) _____ (date)
 _____ (signature of property owner) _____ (date)

Received <u>4-29-2019</u>	Receipt No. <u>130230</u>	Hearing Date <u>6-10-2019</u>	Petition No. <u>REZ-2019-0025</u>
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FACT SHEET

Case #REZ-2019-0025 Bill # Z-19-05-22 Project Start: 28 May 2019

APPLICANT:	National Oil & Gas, Inc.
REQUEST:	To rezone property from C2/Limited Commercial to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.
LOCATION:	The site is located at the southeast corner of Taylor Street and Brooklyn Avenue. The address of the subject property is 2001 Brooklyn Avenue (Section 10 of Wayne Township).
LAND AREA:	Approximately .4 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial
COUNCIL DISTRICT:	5-Geoff Paddock
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

10 June 2019 Public Hearing

- No one spoke at the hearing in favor or opposition.
- Justin Shurley was absent.

17 June 2019 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

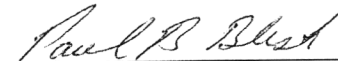
A motion was made by Patrick Zaharako and seconded by Don Schmidt to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

6-0 MOTION PASSED

- Tom Freistroffer, Paul Sauerteig, and Justin Shurley were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
July 2, 2019

Reviewed by:



Paul B. Blisk
Deputy Land Use Director

PROJECT SUMMARY

SITE HISTORY:

- The site is fully developed with gas pumps/canopy and convenience store.
- It appears that the site has been used commercially since the 1960's. Various commercial and retail uses were on the site until the current gas station was approved in 1997.

The petitioner requests a rezoning from C2/Limited Commercial and R1/Single Family Residential to C3/General Commercial to allow the existing use of the property to comply with the current zoning ordinance. The existing gas station and convenience are located at 2001 Brooklyn Avenue, at the intersection with Taylor Street.

Until the Zoning Ordinance Amendment in 2014, a gas station was a permitted use in the C2 zoning district. The petitioner seeks the allowance of the existing gas station, and the ability to maintain, expand and improve as allowed for a permitted use. Along with the rezoning request, the petitioner has submitted a voluntary Written Commitment governing uses on the property. If approved, all but four C3 /General Commercial uses will be **prohibited**. Those new C3 uses proposed to be **permitted** are:

- (1) Automobile car wash
- (2) Gas station
- (3) Propane/bottled gas sales and service as an accessory to a gas station or convenience store
- (4) Truck fueling station

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. Records show that this area has been used commercially since the 1960's. The area is mixed with residential, industrial and commercial uses. The proposal does not include any request to change or increase the intensity of the existing use. The site is small and unlikely to be able to expand without the purchase of additional property. Staff is not opposed to bringing the existing use into compliance with the ordinance with the proposed Written Commitment.

The comprehensive plan supports 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: Scott Federoff, representing the applicant, presented the proposal to the Plan Commission, as outlined above.

Public Comments:

None

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

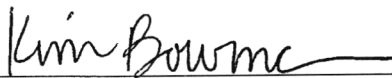
Rezoning Petition REZ-2019-0025

APPLICANT: National Oil & Gas, Inc.
REQUEST: To rezone property from C2/Limited Commercial to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.
LOCATION: The site is located at the southeast corner of Taylor Street and Brooklyn Avenue. The address of the subject property is 2001 Brooklyn Avenue (Section 10 of Wayne Township).
LAND AREA: Approximately .4 acres
PRESENT ZONING: C2/Limited Commercial
PROPOSED ZONING: C3/General Commercial

The Plan Commission recommends that Rezoning Petition REZ-2019-0025, with a Written Commitment, be returned to Council with a "Do Pass" recommendation 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. This property corner has long been used for commercial purposes. The general area is a mix of residential and non-residential uses. The purpose of the rezoning is to allow an existing use to comply with the zoning ordinance.
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 use on the property is existing and is not proposed to change. A proposed Written Commitment prohibiting all but existing C3 uses will protect surrounding property owners from new intensive or incompatible uses.
3. Approval is consistent with the preservation of property values in the area. This proposal does not increase the intensity of the existing use, and allows for the property to be maintained, expanded and/or improved, allowing for investment when desired or necessary.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area.

These findings approved by the Fort Wayne Plan Commission on June 17, 2019.



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



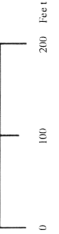
Rezoning Petition REZ-2019-0025 - 2001 Brooklyn Ave



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1 inch = 200 feet





Rezoning Petition REZ-2019-0025 - 2001 Brooklyn Ave

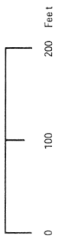


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**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant National Oil & Gas, Inc.
 Address PO Box 476
 City Bluffton State IN Zip 46714
 Telephone 260-824-2220 E-mail tmoser@natoil.com

Contact Person
 Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
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 City Fort Wayne State IN Zip 46804
 Telephone 260-602-8000 E-mail smf@smfklaw.com

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

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- Rezoning Questionnaire (original and 10 copies) County Rezoning Only

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National Oil & Gas, Inc., by Trout Moser, President	<u><i>Trout Moser</i></u>	<u>4/23/19</u>
(printed name of applicant)	(signature of applicant)	(date)
National Oil & Gas, Inc., by Trout Moser, President	<u><i>Trout Moser</i></u>	<u>4/23/19</u>
(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>4-29-2019</u>	Receipt No. <u>130230</u>	Hearing Date <u>6-10-2019</u>	Petition No. <u>REZ-2019-0025</u>
------------------------------	------------------------------	----------------------------------	--------------------------------------

WRITTEN COMMITMENT

This Written Commitment (this “Commitment”) is made effective as of the ___ day of June, 2019, by National Oil & Gas, Inc., an Indiana corporation (“Company”).

RECITALS

A. By virtue of that certain Warranty Deed dated September 12, 1997 and recorded on September 15, 1997 as Document Number 970050925 in the Office of the Recorder of Allen County, Indiana, Company is the owner of record in fee simple of certain real estate located in Allen County, Indiana, which is legally described in the addendum attached to this Commitment as Exhibit “A” (the “Real Estate”).

B. Company filed an application under Case Number REZ-2019-00__ (the “Rezoning Application”) to change the zoning map applicable to the Real Estate from the C2 Zoning District to the C3 Zoning District.

D. Pursuant to Ind. Code § 36-7-4-1015(a)(1) and the City of Fort Wayne Zoning Ordinance (the “Ordinance”), the Fort Wayne Plan Commission (the “Plan Commission”) may require an owner of real property to make a written commitment concerning the use or development of the real property as part of rezoning application (the “Approval”).

E. In connection with the Rezoning Application, Company offered to make, and the Plan Commission required Company to make, a written commitment concerning the use and development of the Real Estate.

COMMITMENT

In consideration of the Approval, Company makes the following written commitments pursuant to I.C. §36-7-4-1015(a)(1):

1. ***PERMITTED/PROHIBITED USES.*** All uses normally permitted in the C3/General Commercial zoning district under §157.216 of the Ordinance that are not permitted uses in the C2/Limited Commercial under §157.213 of the Ordinance (all of which shall remain permitted) shall be prohibited except for the following (which shall be permitted):

- a) Automobile car wash;
- b) Gas station;
- c) Propane/bottled gas sales and service as an accessory use to a gas station or convenience store; and
- d) Truck fueling station.

2. **ENFORCEMENT RIGHTS.** The 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.

3. **EFFECTIVE DATE.** This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

4. **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 and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate.

5. **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.

6. **GOVERNING LAW.** This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

7. **STATUTORY AUTHORITY.** This Commitment is made pursuant to I.C. §36-7-4-1015(a)(1).

8. **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.

9. ***MODIFICATION AND TERMINATION.*** Modification and termination of this Commitment may only be made in accordance I.C. §36-7-4-1015, as such statute may be amended from time-to-time.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE FOLLOWS.]

National Oil & Gas, Inc.,
an Indiana corporation

By: _____
Trout Moser, President

“Company”

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this ____ day of June, 2019, personally appeared Trout Moser, as President of National Oil & Gas, Inc., an Indiana corporation, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:
June 28, 2028

Scott M. Federoff, Notary Public
Resident of Allen, County, Indiana

This instrument prepared by and after recording return to: Scott M. Federoff, SNYDER MORGAN FEDEROFF & KUCHMAY LLP, 4211 Clubview Drive, Fort Wayne, Indiana 46804.

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. Scott M. Federoff

Exhibit "A"
Legal Description of the Real Estate

Parcel 1: Lots Numbered 1, 2, 3, and 6 all in Dreisbach's First Addition to the City of Fort Wayne, Indiana, according to the plat thereof, recorded in Plat Book 11, page 3, in the Office of the Recorder of Allen County, Indiana; Excepting therefrom that part taken for the widening of Brooklyn Avenue, as described in Declaratory Resolution No. 1203-1967.

Parcel 2: Lot Number 4 Dreisbach's First Addition to the City of Fort Wayne except that part taken for the widening of Brooklyn Avenue, as described in Declaratory Resolution No. 1203 and 1204-1967.

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0025
Bill Number: Z-19-05-22
Council District: 5-Geoff Paddock

Introduction Date: May 28, 2019

Plan Commission
Public Hearing Date: June 10, 2019 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 0.37 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses.

Location: 2001 Brooklyn Avenue

Reason for Request: To bring the existing use as a gas station and convenience store into compliance with the zoning ordinance.

Applicant: National Oil and Gas, Inc.

Property Owner: National Oil and Gas, Inc.

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3-General Commercial zoning district, along with a Written Commitment to prohibit other C3 uses. The rezoning will allow the existing use to conform to the ordinance.

Effect of Non-Passage: The property will remain zoned C2-Limited Commercial, which does not permit new gas stations. The existing investment is non-conforming, which affects how the property can be developed or expanded in the future.

BILL NO. Z-19-05-22

REPORT OF COMMITTEE ON REGULATIONS

July 9, 2019

Tom Freistroffer Chair

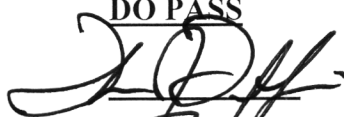



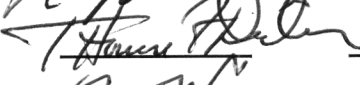
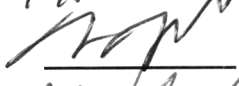
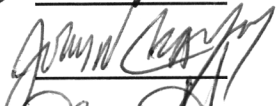

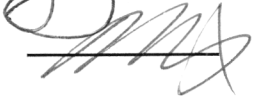
Michael Barranda Co-Chair

All Council Members

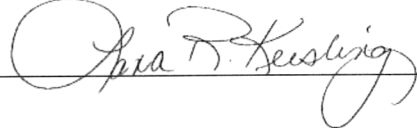
An Ordinance amending the City of Fort Wayne Zoning Map No. J-03 (Sec. 10 of Wayne Township)

To rezone approximately 0.37 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
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**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

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

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

Read the third time in full and on motion by Councilman Freistroffer, 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

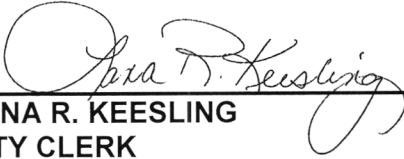
DATED: July 9, 2019




LANA R. KEESLING, CITY CLERK

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

Zoning Ordinance No. Z-19-05-22 on the 9th day of July, 2019



LANA R. KEESLING
CITY CLERK



PRESIDING OFFICER

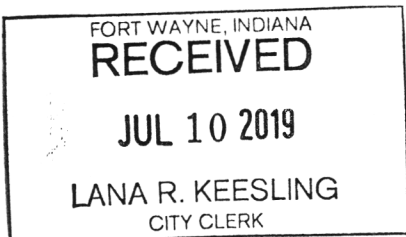
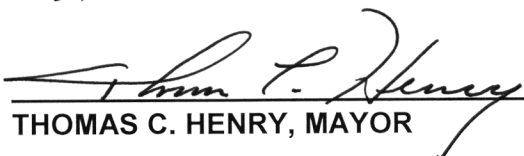
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th of July 2019, at the hour of 9:45 o'clock A.M. E.S.T.



LANA R. KEESLING, CITY CLERK

Approved and signed by me this 10th day of JULY

2019, at the hour of 11:00 o'clock AM E.S.T.

THOMAS C. HENRY, MAYOR