

1 #REZ-2019-0053

2 BILL NO. Z-19-07-09

3  
4 ZONING MAP ORDINANCE NO. Z- 33-19

5 AN ORDINANCE amending the City of Fort Wayne  
6 Zoning Map No. R-11 (Sec. 17 of Adams Township)

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

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

12 Part of the Northwest Quarter of the Southwest Quarter of Section 17, Township 30  
13 North, Range 13 East, in Allen County, Indiana, being more particularly described as  
14 follows:

15 Beginning at the Northwest corner of the Northwest Quarter of the Southwest  
16 Quarter of Section 17, Township 30 North, Range 13 East, as a point of beginning;  
17 thence South along the centerline of the West line of the Northwest  $\frac{1}{4}$  of the  
18 Southwest  $\frac{1}{4}$ , a distance of 202 feet to a point; thence  
19 East parallel to the North line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , a distance of  
20 202 feet to a point; thence North parallel with the West line of the said Northwest  $\frac{1}{4}$   
21 of the Southwest  $\frac{1}{4}$ , a distance of 202 feet to the North line of the Northwest  $\frac{1}{4}$  of  
22 the Southwest  $\frac{1}{4}$ ; thence West a distance of 202 feet to the point of beginning,  
23 excepting therefrom the North 50 feet as an easement for road purposes and  
24 excepting therefrom such other land appropriated from the above-described tract for  
25 street and highway purposes.

26 and the symbols of the City of Fort Wayne Zoning Map No. R-11 (Sec. 17 Adams Township),  
27 as established by Section 157.082 of Title XV of the Code of the City of Fort Wayne, Indiana  
28 is hereby changed accordingly.

29 SECTION 2. If a written commitment is a condition of the Plan Commission's  
30 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

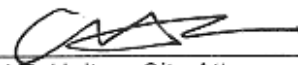
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commitment is hereby approved and is hereby incorporated by reference.

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

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Carol T. Helton, City Attorney

**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
 Applicant Baksho LLC  
 Address 3505 Wayne Trace  
 City Fort Wayne State IN Zip 46806  
 Telephone \_\_\_\_\_ E-mail \_\_\_\_\_

**Contact Person**  
 Contact Person Joshua C. Neal, Attorney  
 Address 215 East Berry Street  
 City Fort Wayne State IN Zip 46802  
 Telephone (260) 423-9551 E-mail jcn@barrettlaw.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 3505 Wayne Trace  
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.27 acres  
 Proposed density \_\_\_\_\_ units per acre  
 Township name Adams Township section # 17  
 Purpose of rezoning (attach additional page if necessary) To bring the subject real estate into compliance 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 plans/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 attached Exhibit A (printed name of applicant)	<u>M Singh</u> (signature of applicant)	<u>6-4-19</u> (date)
See attached Exhibit A (printed name of property owner)	<u>Nachhatar Singh</u> (signature of property owner)	<u>6-4-19</u> (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)

Received <u>July 2-19</u>	Receipt No. <u>131075</u>	Hearing Date <u>Aug 12-19</u>	Petition No. <u>REZ-2019-0053</u>
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Exhibit A  
Rezoning Petition Application  
Signature Page

"APPLICANT"

Baksho LLC

By: NSingh

Name: Nachhatar Singh

Its: President

"PROPERTY OWNER"

Baksho LLC

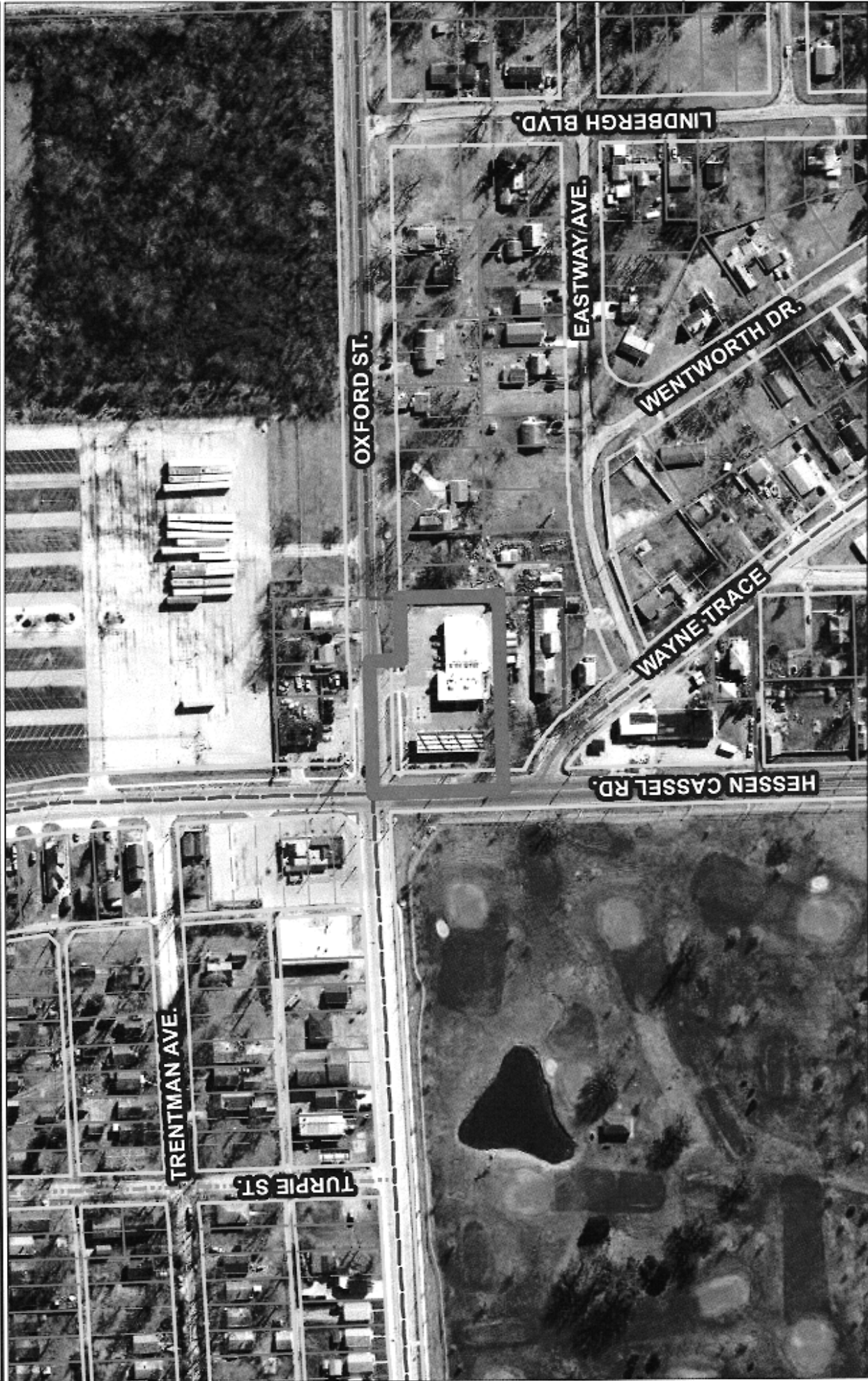
By: NSingh

Name: Nachhatar Singh

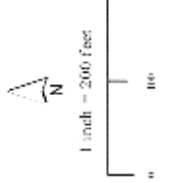
Its: President



Rezoning Petition REZ-2019-0053 - 3505 Wayne Trace

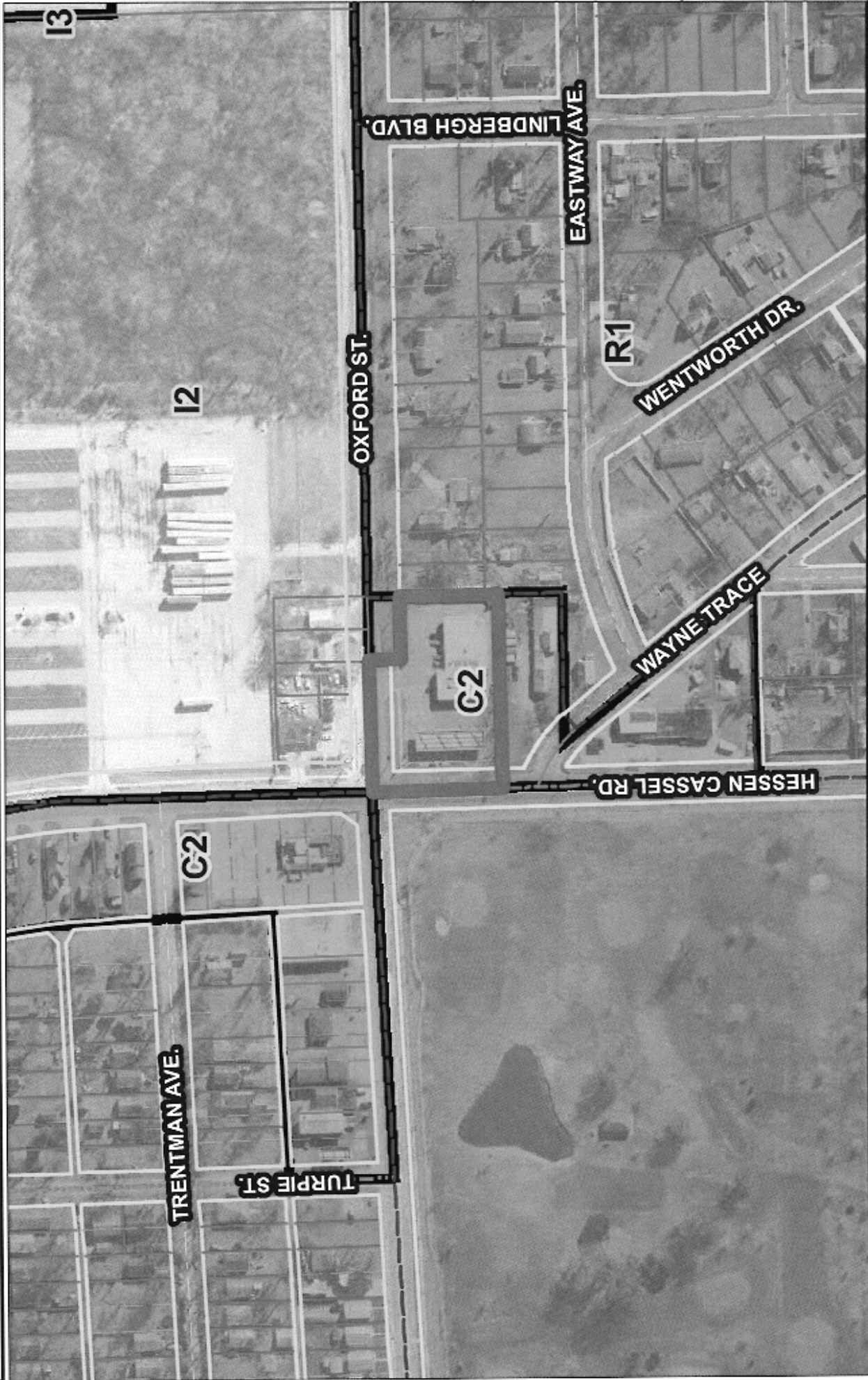


Although these are only standard cases we included in the compilation of this map. Also, County does not warrant the accuracy or reliability of the information provided herein, including any errors or omissions, and the user assumes all liability for its use. © 2014 Board of Commissioners of the County of Allegheny, North American FIM 1001 State Plane Coordinate System, datum: NAD 83, datum and datum, Spring 2009. Scale: 1:25000





Rezoning Petition REZ-2019-0053 - 3505 Wayne Trace



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 State Plane Coordinate System, NAD83 Zone 10  
 Photos and Graphics: Spring 2019  
 Date: 5/8/2019



1 inch = 200 Feet



## WRITTEN COMMITMENT

**THIS WRITTEN COMMITMENT** ("Commitment") is made as of this \_\_\_ day of June, 2019, by Baksho LLC (herein the, "Declarant"), under the following circumstances:

### WITNESSETH:

**WHEREAS**, Declarant is the fee simple 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 REZ-2019-\_\_\_\_ (the "Zoning Application") with respect to the Real Estate; and

**WHEREAS**, pursuant to the Zoning Application, Declarant has requested the Real Estate be rezoned to C-3 pursuant to the City of Fort Wayne Zoning Ordinance (the "Ordinance"); and

**WHEREAS**, Declarant, in conjunction with the Zoning Application, has submitted this written 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 off site 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. All uses that are permitted as a matter of right in the C-3 (General Commercial) zoning district pursuant to Section 157.216 of the Ordinance that are not also permitted as a matter of right in the C-2 (Limited Commercial) zoning district pursuant to Section 157.213 of the Ordinance shall be prohibited, except for the following:

- 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.

Notwithstanding anything contained herein to the contrary, and for purposes of the avoidance of doubt, all uses that are permitted as a matter of right in the C-2 (Limited Commercial) zoning district pursuant to Section 157.213 of the Ordinance shall continue to be permitted uses on the Real Estate.

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)(2).

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DRAFT

“DECLARANT”

Baksho LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF INDIANA

)

) SS:

COUNTY OF ALLEN

)

Before me, the undersigned, a Notary Public, in and for said County and State, this \_\_\_ day of \_\_\_\_\_, 2019, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Baksho LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing.

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

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

My Commission Expires: \_\_\_\_\_

My County of Residence: Allen

THIS INSTRUMENT prepared by Joshua C. Neal, Esq., Barrett McNagny LLP, 215 East Berry Street, 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. Joshua C. Neal

When recorded, return to: Joshua C. Neal, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

**EXHIBIT "A"**

Part of the Northwest Quarter of the Southwest Quarter of Section 17, Township 30 North, Range 13 East, in Allen County, Indiana, being more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 17, Township 30 North, Range 13 East, as a point of beginning; thence South along the centerline of the West line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , a distance of 202 feet to a point; thence East parallel to the North line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , a distance of 202 feet to a point; thence North parallel with the West line of the said Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , a distance of 202 feet to the North line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ ; thence West a distance of 202 feet to the point of beginning, excepting therefrom the North 50 feet as an easement for road purposes and excepting therefrom such other land appropriated from the above-described tract for street and highway purposes.

## FACT SHEET

Case #REZ-2019-0053    Bill # Z-19-07-09    Project Start: 23 July 2019

APPLICANT:	Baksho, LLC
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 address of the subject property is 3505 Wayne Trace (Section 17 of Adams Township).
LAND AREA:	Approximately 1.3 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial
COUNCIL DISTRICT:	6-Glynn Hines
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

### 12 August 2019 Public Hearing

- No public comments were made at the hearing.
- Billy Davenport, Tom Freistroffer, Rachel Tobin-Smith, and Judi Wire were absent.

### 19 August 2019 – Business Meeting

#### Plan Commission Recommendation: DO PASS w/Written Commitment

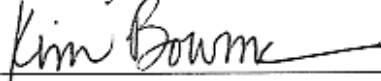
A motion was made by Connie Haas Zuber and seconded by Judi Wire to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

#### 7-0 MOTION PASSED

- Tom Freistroffer and Paul Sauerteig were absent.

Fact Sheet Prepared by:  
Michelle B. Wood, Senior Land Use Planner  
September 5, 2019

Reviewed by:

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

## PROJECT SUMMARY

- The site is fully developed with gas pumps/canopy, convenience store and attached retail.
- The site was rezoned to B1 in 1959 (currently C2/Limited Commercial)
- The gas station was completed in 2005, the attached retail was completed in 2013.

The petitioner requests a rezoning from C2/Limited Commercial to C3/General Commercial to allow the existing use of the property to comply with the current zoning ordinance. The existing gas station, convenience store, and canopy are located along the east side of Wayne Trace on the southeast corner of Wayne Trace and Oxford Street. The property was rezoned to B1 in 1959, which later became CM2 via an Ordinance update. Prior to the current use, the property operated commercially until 2005 when the gas station was constructed as a permitted use in the CM2 zoning district. The CM2 zoning later became C2/Limited Commercial via a Zoning Ordinance amendment. The 2014 zoning ordinance amendment removed gas stations as a permitted use from the C2 district. The attached retail building will not be affected by the proposed rezoning.

The petitioner seeks the allowance of the existing gas station, and the ability to maintain, expand and improve as allowed for a permitted use. The current gas station developed on the property under existing zoning which permitted the development without requiring a rezoning.

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. The gas station and convenience store with attached retail are located at fully developed commercial intersection and the existing gas station was developed in accordance with the Ordinance effective in 2005 and was a permitted use. This proposal does not include any request to change or increase the intensity of the existing use. Staff is not opposed to bringing the existing use into compliance with the ordinance, with a 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: Josh Neal, Barrett McNagny, represented the applicant and presented the proposal to the Plan Commission, as outlined above.

### Public Comments:

none

## FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

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### Rezoning Petition REZ-2019-0053

APPLICANT: Baksho, LLC  
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 address of the subject property is 3505 Wayne Trace (Section 17 of Adams Township).  
LAND AREA: Approximately 1.3 acres  
PRESENT ZONING: C2/Limited Commercial  
PROPOSED ZONING: C3/General Commercial

---

**The Plan Commission recommends that Rezoning Petition REZ-2019-0053, 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. The existing gas station was developed in 2005 as a permitted use under the Zoning Ordinance. No changes are proposed to the development. 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 existing development received Plan Commission and legislative review and approval. 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 August 19, 2019.



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

**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
 Applicant Baksho LLC  
 Address 3505 Wayne Trace  
 City Fort Wayne State IN Zip 46806  
 Telephone \_\_\_\_\_ E-mail \_\_\_\_\_

**Contact Person**  
 Contact Person Joshua C. Neal, Attorney  
 Address 215 East Berry Street  
 City Fort Wayne State IN Zip 46802  
 Telephone (260) 423-9551 E-mail jcn@barrettlaw.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 3505 Wayne Trace  
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.27 acres  
 Proposed density \_\_\_\_\_ units per acre  
 Township name Adams Township section # 17  
 Purpose of rezoning (attach additional page if necessary) To bring the subject real estate into compliance 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.*

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- Applicable number of surveys showing area to be rezoned (plus 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 attached Exhibit A MSingh 6-4-19  
 (printed name of applicant) (signature of applicant) (date)  
 See attached Exhibit A Nachhatar Singh 6-4-19  
 (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>July 2-19</u>	<u>131075</u>	<u>Aug 12-19</u>	<u>REZ-2019-0053</u>

Exhibit A  
Rezoning Petition Application  
Signature Page

"APPLICANT"

Baksho LLC

By: NSingh

Name: Nachhatae Singh

Its: President

"PROPERTY OWNER"

Baksho LLC

By: NSingh

Name: Nachhatae Singh

Its: President



Rezoning Petition REZ-2019-0053 - 3505 Wayne Trace



After printing, users are advised to  
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The map is not to be used for any other  
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Map Data: GeoBasis Systems, DeLorme Inc.  
Map Data: GeoBasis Systems, DeLorme Inc.  
Date: 7/12/2019



1 inch = 200 Feet





## WRITTEN COMMITMENT

**THIS WRITTEN COMMITMENT** ("Commitment") is made as of this \_\_\_ day of June, 2019, by Baksho LLC (herein the, "Declarant"), under the following circumstances:

### WITNESSETH:

**WHEREAS**, Declarant is the fee simple 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 REZ-2019-\_\_\_\_ (the "Zoning Application") with respect to the Real Estate; and

**WHEREAS**, pursuant to the Zoning Application, Declarant has requested the Real Estate be rezoned to C-3 pursuant to the City of Fort Wayne Zoning Ordinance (the "Ordinance"); and

**WHEREAS**, Declarant, in conjunction with the Zoning Application, has submitted this written 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 off site 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. All uses that are permitted as a matter of right in the C-3 (General Commercial) zoning district pursuant to Section 157.216 of the Ordinance that are not also permitted as a matter of right in the C-2 (Limited Commercial) zoning district pursuant to Section 157.213 of the Ordinance shall be prohibited, except for the following:

- 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.

Notwithstanding anything contained herein to the contrary, and for purposes of the avoidance of doubt, all uses that are permitted as a matter of right in the C-2 (Limited Commercial) zoning district pursuant to Section 157.213 of the Ordinance shall continue to be permitted uses on the Real Estate.

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)(2).

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

DRAFT

"DECLARANT"

Baksho LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF INDIANA

)

) SS:

COUNTY OF ALLEN

)

Before me, the undersigned, a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Baksho LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing.

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

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

My Commission Expires: \_\_\_\_\_

My County of Residence: Allen

THIS INSTRUMENT prepared by Joshua C. Neal, Esq., Barrett McNagny LLP, 215 East Berry Street, 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. Joshua C. Neal

When recorded, return to: Joshua C. Neal, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

**EXHIBIT "A"**

Part of the Northwest Quarter of the Southwest Quarter of Section 17, Township 30 North, Range 13 East, in Allen County, Indiana, being more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 17, Township 30 North, Range 13 East, as a point of beginning; thence South along the centerline of the West line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , a distance of 202 feet to a point; thence East parallel to the North line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , a distance of 202 feet to a point; thence North parallel with the West line of the said Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , a distance of 202 feet to the North line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ ; thence West a distance of 202 feet to the point of beginning, excepting therefrom the North 50 feet as an easement for road purposes and excepting therefrom such other land appropriated from the above-described tract for street and highway purposes.

DRAFT

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-2019-0053  
Bill Number: Z-19-07-09  
Council District: 6-Glynn Hines

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Introduction Date: July 23, 2019  
  
Plan Commission  
Public Hearing Date: August 12, 2019 (not heard by Council)  
  
Next Council Action: Ordinance will return to Council after recommendation by the  
Plan Commission

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Synopsis of Ordinance: To rezone approximately 1.27 acres from C2/Limited Commercial to  
C3/General Commercial with a Written Commitment to restrict certain  
uses.  
  
Location: 3505 Wayne Trace  
  
Reason for Request: To bring the existing use as a gas station and convenience store into  
compliance with the zoning ordinance.  
  
Applicant: Baksho, LLC  
  
Property Owner: Baksho, LLC

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Related Petitions: none

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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-19-07-09**

**REPORT OF COMMITTEE ON REGULATIONS**  
**September 10, 2019**

***Tom Freistroffer* Chair**



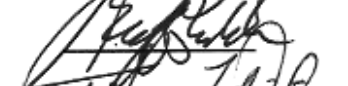
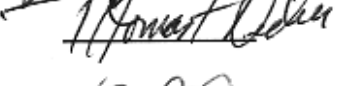
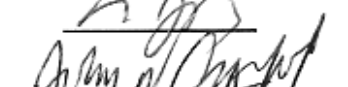
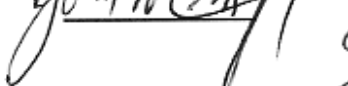
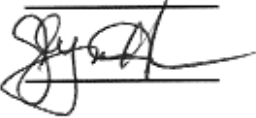

***Michael Barranda* Co-Chair**

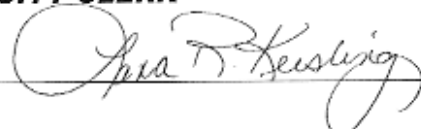
***All Council Members***

An Ordinance amending the City of Fort Wayne Zoning Map No. R-11 (Sec. 17 of Adams Township)

*To rezone approximately 1.27 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses at 3505 Wayne Trace*

**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>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
		_____	_____
	_____	_____	_____

**LANA R. KEESLING**  
**CITY CLERK**  


Public Hearing Date: August 12, 2019

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

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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 type="checkbox"/>	<input checked="" 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: September 10, 2019

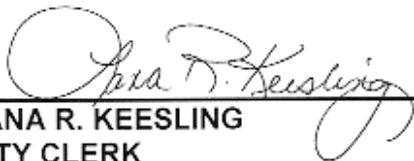



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LANA R. KEESLING, CITY CLERK

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

Ordinance No. Z-19-07-09 on the 10th day of September, 2019




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LANA R. KEESLING  
CITY CLERK




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PRESIDING OFFICER

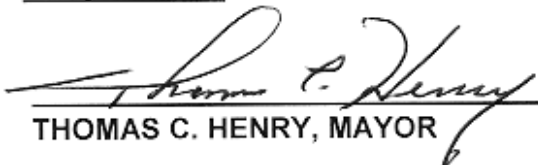
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th of September 2019, at the hour of 11:40 o'clock A.M. E.S.T.




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LANA R. KEESLING, CITY CLERK

Approved and signed by me this 12<sup>th</sup> day of SEPTEMBER 2019, at the hour of 9:30 o'clock AM E.S.T.




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THOMAS C. HENRY, MAYOR

