

1 #REZ-2019-0055

2 BILL NO. Z-19-07-11

3  
4 ZONING MAP ORDINANCE NO. Z-31-19

5 AN ORDINANCE amending the City of Fort Wayne  
6 Zoning Map No. M-15 (Sec. 23 of Wayne 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 The East 100 feet of Lots Numbered 584, 583, 582 and the North 30 feet of the East  
13 100 feet of Lot Number 581 in Belmont Addition to the City of Fort Wayne, as  
14 recorded in Plat Record 5, pages 39-40, in the Office of the Recorder of Allen  
15 County, Indiana.

16 and the symbols of the City of Fort Wayne Zoning Map No. M-15 (Sec. 23 Wayne  
17 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort  
18 Wayne, Indiana is hereby changed accordingly.

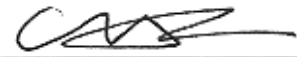
19 SECTION 2. If a written commitment is a condition of the Plan Commission's  
20 recommendation for the adoption of the rezoning, or if a written commitment is modified and  
21 approved by the Common Council as part of the zone map amendment, that written  
22 commitment is hereby approved and is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

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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 Council Member

6 APPROVED AS TO FORM AND LEGALITY:

7   
8 \_\_\_\_\_  
9 Carol T. Helton, City Attorney

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**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
 Applicant KPC Investment LLC  
 Address 4832 S. Calhoun Street  
 City Fort Wayne State IN Zip 46808  
 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 4832 S. Calhoun Street  
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.31  
 Proposed density \_\_\_\_\_ units per acre  
 Township name Wayne Township section # 15  
 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.*

- 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	<u>[Signature]</u>	<u>6-4-19</u>
(printed name of applicant)	(signature of applicant)	(date)
See attached Exhibit A	<u>[Signature]</u>	<u>6-4-19</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	Receipt No.	Hearing Date	Petition No.
<u>July 2-19</u>	<u>131074</u>	<u>Aug 12-19</u>	<u>REZ-2019-0055</u>

Exhibit A  
Rezoning Petition Application  
Signature Page

"APPLICANT"

KPC Investments, LLC

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

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

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

"PROPERTY OWNER"

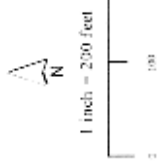
KPC Investments, LLC

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

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

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

Rezoning Petition REZ-2019-0055 - 4832 S Calhoun St



Although this map is only for informational purposes, it is not a guarantee of the accuracy of the information shown. The City of Dallas is not responsible for any errors or omissions in this map. ©2019 City of Dallas, Department of Planning and Economic Development. All rights reserved. City of Dallas, Texas 75201. State Plane Coordinate System, Dallas East. Map of Dallas, Texas, Spring 2019. Page 3 of 20.

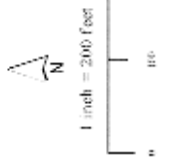


Rezoning Petition REZ-2019-0055 - 4832 S Calhoun St



Although not shown, certain lots have been rezoned for commercial use. The rezoning is for the entire lot and is not subject to any conditions or restrictions. The rezoning is for the entire lot and is not subject to any conditions or restrictions. The rezoning is for the entire lot and is not subject to any conditions or restrictions.

© 2019 Board of Commissioners of the County of Alton  
 3000 State Government Building, Alton, MO 64601  
 Planning and Community Services  
 Date: 5/23/19



## WRITTEN COMMITMENT

**THIS WRITTEN COMMITMENT** (“Commitment”) is made as of this \_\_\_ day of June, 2019, by KPC Investments, 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”

KPC Investments 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 KPC Investments 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"**

DRAFT

## FACT SHEET

Case #REZ-2019-0055      Bill # Z-19-07-11      Project Start: 23 July 2019

APPLICANT:	KPC Investment 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 4832 South Calhoun Street (Section 23 of Wayne Township).
LAND AREA:	Approximately .3 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

### 12 August 2019 Public Hearing

- Staff received one letter of support.
- 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

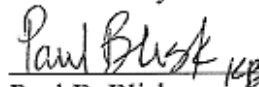
A motion was made by Rachel Tobin-Smith and seconded by Justin Shurley to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

#### 7-0 MOTION PASSED

- Tom Freistroffer and Paul Sauerteig were absent.

Fact Sheet Prepared by:  
Michelle B. Wood, Senior Land Use Planner  
August 27, 2019

Reviewed by:



Paul B. Blisk  
Deputy Land Use Director

## PROJECT SUMMARY

- The site is fully developed with gas pumps/canopy and convenience store.
- The site was rezoned to B1 in 1956 (currently C2/Limited Commercial)
- The gas station was built in in 2013

### STAFF DISCUSSION:

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 west side of South Calhoun Street just west of Southgate Shopping Center. The property was rezoned to B1 in 1956. B1 later became CM2 with a Zoning Ordinance update. The property was used commercially until the site redeveloped with a gas station in 2013. In 2013 the property developed on existing CM2 zoning which later became C2/Limited Commercial via a Zoning Ordinance amendment. In 2013, when the property was developed, the Ordinance permitted the gas station use in the CM2 district. The 2014 zoning ordinance amendment removed gas stations from the C2 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. 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 are located at the north end of a commercial developed section of S Calhoun Street and was developed in accordance with the Ordinance effective in 2013 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-2019-0055

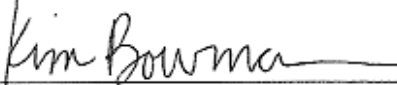
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LAND AREA: Approximately .3 acres  
PRESENT ZONING: C2/Limited Commercial  
PROPOSED ZONING: C3/General Commercial

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**The Plan Commission recommends that Rezoning Petition REZ-2019-0055, 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 2013 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 project 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 KPC Investment LLC  
 Address 4832 S. Calhoun Street  
 City Fort Wayne State IN Zip 46808  
 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@barrettllaw.com

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**Request**  
 Allen County Planning Jurisdiction  City of Fort Wayne Planning Jurisdiction  
 Address of the property 4832 S. Calhoun Street  
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.31  
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 Township name Wayne Township section # 15  
 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**  
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- Applicable filing fee
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- 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 \_\_\_\_\_ Chang 6-4-19  
 (printed name of applicant) (signature of applicant) (date)  
 See attached Exhibit A \_\_\_\_\_ Charanjit 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>171074</u>	<u>Aug 12-19</u>	<u>REZ-2019-0055</u>

Exhibit A  
Rezoning Petition Application  
Signature Page

"APPLICANT"

KPC Investments, LLC

By: CSingh

Name: Charanjit Singh

Its: Member

"PROPERTY OWNER"

KPC Investments, LLC

By: CSingh

Name: Charanjit Singh

Its: Member



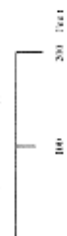
Rezoning Petition REZ-2019-0055 - 4832 S Calhoun St



All other parcel boundaries shown on this map  
 have been provided for the convenience of the map.  
 All other County data is shown as a reference.  
 The accuracy of the information on this map is not  
 warranted by the City of Dallas, and the City is not  
 responsible for any errors or omissions on the map.  
 © 2019 City of Dallas, Department of Planning and Economic Development  
 Southwestern Bellway, Inc.  
 City of Dallas, Texas  
 Planning Department, Dallas, Texas  
 Date: 1/20/19



1 inch = 200 Feet





Rezoning Petition REZ-2019-0055 - 4832 S Calhoun St



Although this zoning map is based on the best available information, the City of Chicago does not warrant or guarantee the accuracy of the information contained hereon and is not responsible for any errors or omissions in this map.

City of Chicago  
 820 North Dearborn Street  
 Suite 1000  
 Chicago, Illinois 60610  
 Date: 1/20/20



1 inch = 200 feet



## WRITTEN COMMITMENT

**THIS WRITTEN COMMITMENT** (“Commitment”) is made as of this \_\_\_ day of June, 2019, by KPC Investments, 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”

KPC Investments 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 KPC Investments 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"

DRAFT

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

---

**Department of Planning Services**

Title of Ordinance: Zoning Map Amendment  
Case Number: REZ-2019-0055  
Bill Number: Z-19-07-11  
Council District: 5-Geoff Paddock

---

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 0.31 acres from C2/Limited Commercial to  
C3/General Commercial with a Written Commitment to restrict certain  
uses.

Location: 4832 South Calhoun

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

Applicant: KPC Investment LLC

Property Owner: KPC Investment 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-19-07-11**

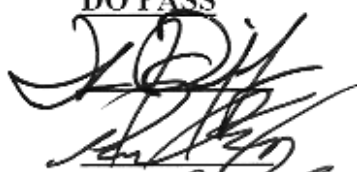
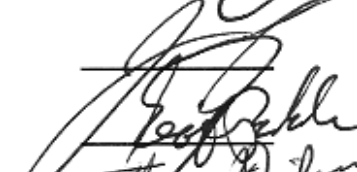
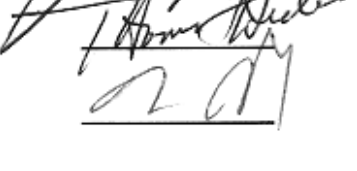


**REPORT OF COMMITTEE ON REGULATIONS**  
**September 10, 2019**

***Tom Freistroffer Chair***  
***Michael Barranda Co-Chair***  
***All Council Members***

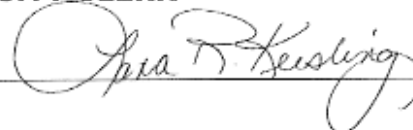
An Ordinance amending the City of Fort Wayne Zoning Map No. M-15 (Sec. 23 of Wayne Township)

*To rezone approximately 1.27 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses at 4832 S Calhoun*

**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:

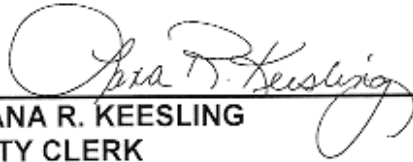
<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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

  
LANA R. KEESLING, CITY CLERK

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

Ordinance No. Z-19-07-11 on the 10th day of September, 2019

  
LANA R. KEESLING  
CITY CLERK

  
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.

  
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.

  
THOMAS C. HENRY, MAYOR

FORT WAYNE, INDIANA

RECEIVED

SEP 13 2019

LANA R. KEESLING  
CITY CLERK