

1 #REZ-2022-0002

2 BILL NO. Z-22-02-02

3
4 ZONING MAP ORDINANCE NO. Z-7-22

5 AN ORDINANCE amending the City of Fort Wayne
6 Zoning Map No. N-34 (Sec. 24 of Washington 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 Southeast Quarter of Section 14, Township 30 North, Range 11 East,
13 Allen County, Indiana, more particularly described as follows, to-wit:

14 Lot 10, Section A", Washington Center Place Addition, according to the Plat thereof,
15 recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the
16 office of the Recorder of Allen County, Indiana, except that part thereof appropriated
17 for highway purposes under Allen Superior Court No. 3 Cause No. 5082 and except
18 the North 20 feet of the above described real estate conveyed for highway purposes
19 by instrument recorded as Document 70-15115, in the office of the Recorder of said
20 County, and except the North 5 feet of Lot 10 as established by Instrument 70-
21 15115, per Street Dedication dated September 16, 1974.

22 TOGETHER WITH:

23 Lot 11, Section A", Washington Center Place Addition, according to the Plat thereof,
24 recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the
25 office of the Recorder of Allen County, Indiana, except that part thereof appropriated
26 for highway purposes under Allen Superior Court No. 3 Cause No. 4898.

27 and the symbols of the City of Fort Wayne Zoning Map No. N-34 (Sec. 24 of Washington
28 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
29 Wayne, Indiana is hereby changed accordingly.
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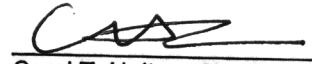
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SECTION 2. If a written commitment is a condition of the Plan Commission's recommendation for the adoption of the rezoning, or if a written commitment is modified and approved by the Common Council as part of the zone map amendment, that written commitment is hereby approved and is hereby incorporated by reference.

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

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2022-0002
Bill Number: Z-22-02-02
Council District: 3 – Tom Didier

Introduction Date: February 8, 2022
Plan Commission
Public Hearing Date: February 14, 2022 (not heard by Council)
Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

Synopsis of Ordinance: To rezone 1.04 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses
Location: 5830 Coldwater Road
Reason for Request: To bring an existing gas station and convenience store into compliance with the zoning ordinance.
Applicant: Onkar Oil, LLC
Property Owner: Onkar Oil, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3/General Commercial zoning district, which will allow the existing use as a permitted use by right. A recorded Written Commitment on the property will restrict all C3 uses except those on site currently and those permitted in the C2/Limited Commercial district.

Effect of Non-Passage: The property will remain zoned for limited commercial uses. The gas station and convenience store may remain as a non-conforming use, but the owner may be limited on future maintenance, expansion, and financing resources because of the non-conforming status.

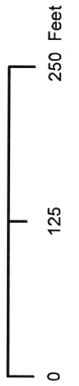


Rezoning Petition REZ-2022-0002 - 5830 Coldwater Road



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

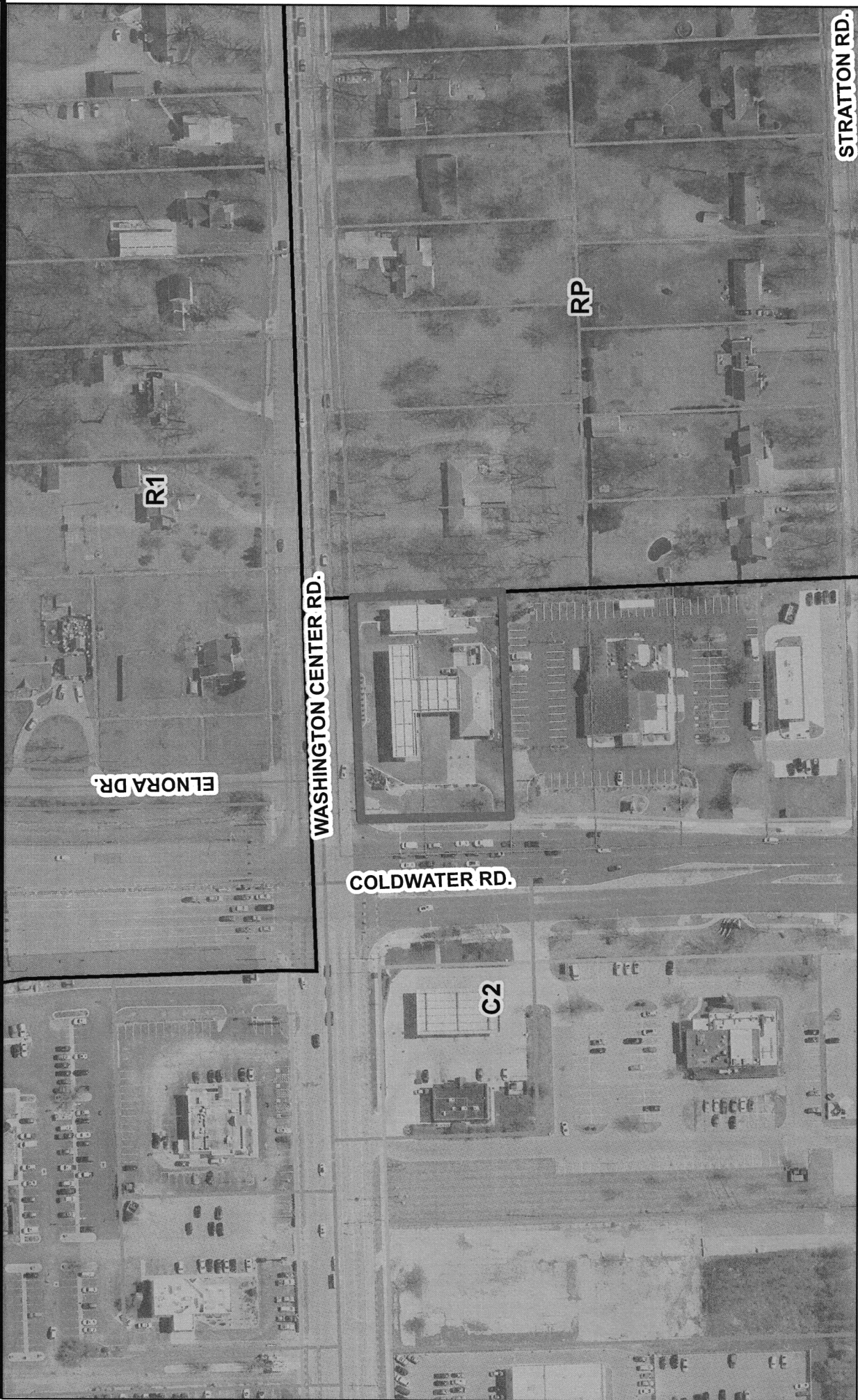
© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 1/19/2022



1 inch = 150 feet

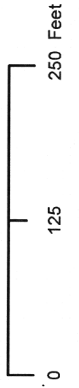


Rezoning Petition REZ-2022-0002 - 5830 Coldwater Road



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© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 1/19/2022



1 inch = 150 feet

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant Onkar Oli, LLC
 Address 624 East Lewis Street
 City Fort Wayne State IN Zip 46802
 Telephone 260-452-7728 E-mail _____

Contact Person
 Contact Person Kelly Tappy Design, Inc. (Matt Keilty)
 Address 116 East Berry Street, Suite 700
 City Fort Wayne State IN Zip 46802
 Telephone 260-426-7770 E-mail matt@kellytappy.com

All mail 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 5830 Coldwater Road, Fort Wayne, IN 46825
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.04 acres
 Proposed density (see attached site development schematic) _____ units per acre
 Township name Washington Township section # 0024
 Purpose of rezoning (attach additional page if necessary) Purpose of re-zoning is to accomplish zoning consistent with current use.

Sewer provider: Fort Wayne Water provider: Fort Wayne

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 submission requirements.

- Filing 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, agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the parcel shown on the survey and 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 \$5.00 per notice and a public notice fee of \$50.00 per Indiana code.

Mann Onkar [Signature] December 29, 2021
 (printed name of applicant) (signature of applicant) (date)
Mann Onkar [Signature] December 29, 2021
 (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>1/19/21</u>	Receipt No. <u>159173</u>	Hearing Date <u>2/14/21</u>	Petition No. <u>REZ-2022-0002</u>
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COLDWATER RD

2019059993
RECORDED: 11/20/2019 12:40:10 PM
ANITA MATHER
ALLEN COUNTY RECORDER
FORT WAYNE, IN

CORPORATE WARRANTY DEED

Parcel number: 02-07-24-101-001.000-073

Washington 12331865

THIS INDENTURE WITNESSETH, that National Oil & Gas, Inc. ("Grantor"), an Indiana corporation in good standing under the laws of the State of Indiana, CONVEYS AND WARRANTS UNTO J.K. Coldwater LLC, a limited liability company, located in Allen County in the State of Indiana ("Grantee"), in consideration of Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, real estate located in Allen County, Indiana, more particularly described as follows, to-wit, on the attached Exhibit "A" ("Real Estate");

SUBJECT to all easements, restrictions, and limitations of record, as well as all applicable zoning ordinances.

SUBJECT to real estate taxes due and payable in November 2019, and thereafter.

SUBJECT to the restrictive covenants and conditions which are attached hereto made a part hereof and marked as Exhibit "B."

This deed given in satisfaction of that certain Contract for Conditional Sale of Real Estate as evidenced by that certain Memorandum of Contract for Conditional Sale of Real Estate between National Oil & Gas, Inc., vendor(s), and BPR Oil Corp., RESHAM SINGH, an individual residing in Indiana, and BALBIR S. BANWAI vendee(s), dated October 20, 2009, recorded October 21, 2009, in Document No. 2009054194; amended by Amendment to Contract for Conditional Sale of Real Estate, dated January 22, 2013, recorded February 13, 2015 as Document No. 2015007969. Said vendee's interest being transferred by the ASSIGNMENT OF CONTRACT by and between NATIONAL OIL & GAS, INC., an Indiana corporation ("Land Contract Seller") and BPR OIL CORP., an Indiana corporation, with its principal office at 5830 Coldwater Road, Fort Wayne, Indiana 46825, RESHAM SINGH, an individual residing in Indiana, and BALBIR S. BANWAI, an Indiana resident (collectively "Grantor"), to J.K. COLDWATER LLC, dated _____ and recorded 11/20/19 as Instrument No. 2019059993

The individuals signing this Corporate Warranty Deed warrant and represent that pursuant to the By-laws or duly adopted resolutions of the Grantor, that the undersigned has all necessary authority to execute this Corporate Warranty Deed conveying the real estate described above, that no further corporate action is necessary for the making of this conveyance, and that the Grantor is in good standing in the state of its organization and, if required, in the State where the aforescribed real estate is located.

IN WITNESS WHEREOF, Grantor has caused this Corporate Warranty Deed to be executed
October 2, 2019.

[SIGNATURE ON NEXT PAGE]
METROPOLITAN TITLE OF IN
9604 COLDWATER ROAD
SUITE 105
FORT WAYNE IN 46825
145426

14659/311/0098246-4JB

AUDITOR'S OFFICE
Duly entered for taxation. Subject
to final acceptance for transfer.

Nov 20 2019

Nicholas D Jordan

AUDITOR OF ALLEN COUNTY

National Oil & Gas, Inc.
BY: [Signature]
Alan J. Guanter, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF Allen)

Before me, a Notary Public in and for said County and State, this 2nd day of October, 2019, appeared Alan J. Guanter, the Vice President of National Oil & Gas, Inc., who acknowledged the execution of the above and foregoing Corporate Warranty Deed for and on behalf of the above Grantor, and who, having been duly sworn, stated that the above representations are true.

My Commission Expires: _____
Resident of: Allen
Commission no. 658455

[Signature]
NOTARY PUBLIC
CHAD R. ELDRIDGE, Notary Public
Allen County, State of Indiana
Commission Number 658455
My Commission Expires November 4, 2022



This instrument prepared by JEFFREY B. HARDING (L.D. #17362-71), Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802; telephone: (260) 426-0444; fax: (260) 422-0274. I affirm, under the penalties for perjury, that I have taken reasonable care to reduce each Social Security Number in this document, unless required by Law. /s/ Jeffrey B. Harding

Grantee mailing address:
5830 Coldwater Road
Fort Wayne, IN 46825

Mell tax bills to:
5830 Coldwater Road
Fort Wayne, IN 46825

EXHIBIT A

5830 Coldwater Road, Fort Wayne, Indiana 46825

Lot 10, Section A", Washington Center Place Addition, according to the Plat thereof, recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the office of the Recorder of Allen County, Indiana, except that part thereof appropriated for highway purposes under Allen Superior Court No. 3 Cause No. 5082 and except the North 20 feet of the above described real estate conveyed for highway purposes by instrument recorded as Document 70-15115, in the office of the Recorder of said County, and except the North 5 feet of Lot 10 as established by Instrument 70-15115, per Street Dedication dated September 16, 1974.

TOGETHER WITH:

Lot 11, Section A", Washington Center Place Addition, according to the Plat thereof, recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the office of the Recorder of Allen County, Indiana, except that part thereof appropriated for highway purposes under Allen Superior Court No. 3 Cause No. 4898.

14639311/008245-4JB

EXHIBIT B

This deed is subject to the following reservations, restrictions and conditions which shall be covenants running with the land ("Real Estate") and shall be binding upon Grantee, its successors, assigns and all future owners of the Real Estate, and their respective directors, officers, employees, contractors, agents, representatives, lessees, licensees, invitees, and any user or occupant of all or any portion of the Real Estate.

1. Grantee agrees that for a period of twenty-five (25) years from and after October 20, 2009, the Real Estate shall not be used for the sale, marketing, storage or advertising of motor fuels or motor oils, except the trademarked products of Marathon Petroleum Company LLC, its successors and assigns, purchased either directly from Marathon Petroleum Company LLC, its successors and assigns or from a MARATHON® branded Jobber and that this restriction shall be a covenant running with the land and shall be contained in and made a part of every deed, mortgage, lease or other instrument affecting the title to said Real Estate.
2. Grantee agrees that for a period of twenty-five (25) years from and after October 20, 2009, the Real Estate, if converted to a use other than a MARATHON® retail motor fuel outlet, shall not be used for a convenience store or for the sale, marketing, storage or advertising of tobacco products, and that this restriction shall be a covenant running with the land and shall be contained in and made a part of every deed, mortgage, lease or other instrument affecting the title to said Real Estate.
3. In the event that Grantee desires to sell any Real Estate and the Real Estate is used for the purpose other than as a MARATHON® retail motor fuel outlet, Grantee shall upon the closing of such sale, pay to Grantor an amount equal to a percentage, determined according to the schedule in Section 5 below, of the amount by which the price (which shall include the payment of any amounts related to the Real Estate including, but not limited to, business value, goodwill, and other intangible assets) of such sale exceeds the sum of \$1,250,000.00 plus the improvements made to the Real Estate since the date of original conveyance, which sum shall be adjusted, as of the date of the closing of such sale, as provided in subsection 5 below.
4. Alternatively, in the event that Grantee desires to lease the Real Estate for use other than a MARATHON retail motor fuel outlet Grantee shall, commencing upon the closing of such lease and monthly thereafter until expiration or termination of such lease, pay to Grantor a percentage, determined according to the schedule in Section 5 below, of the amount by which monthly rental under such lease exceeds one percent (1%) of the sum of \$1,250,000.00, plus the improvements made by Grantor or Grantee to the Real Estate since the date of October 20, 2009, which sum shall be adjusted, as of the date of closing such lease, as provided in subsection 5 below.

5. Percentage to be paid:

Date of Sale or Lease	Percentage
Up to 6 years after original conveyance	40%
6 through 10 years after original conveyance	30%
11 through 15 years after original conveyance	20%

Real property shall be appreciated at a rate of three percent (3%) per annum from date of original conveyance and improvements shall be depreciated at a rate of ten percent (10%) per annum from date of improvement.

6. The restrictive covenants set out in sections 1, 2, 3, 4 and 5 above are part of the consideration for this conveyance running from Grantor to Grantee, and the purchase price was reduced because of same. Nothing herein shall be construed to require or obligate Grantor to repurchase the Real Estate at any time.

7. The restrictive covenants of sections 2 and 3 above shall be deemed covenants running with the land and shall be made a part of every deed, lease, mortgage or other instrument affecting the title to the Real Estate. The restrictive covenants in sections 1, 2 and 3 above shall be binding upon the Grantee, his grantees, heirs, personal representative, successors and assigns for a period of twenty-five (25) years from October 20, 2009. The restrictive covenant in section 5 above shall be binding upon the Grantee, his grantees, heirs, personal representative, successors and assigns for a period of fifteen (15) years from October 20, 2009. However, subsequent to Grantor receiving notice as set forth above and Grantor in sections 2 and 3 above and Grantee's payment to Grantor in compliance with sections 2 and 3 above, remote grantees shall take the Real Estate free of said covenants of sections 2 and 3, but the restrictive covenant set out in section 1 above shall not be affected.

8. In case any one or more of the reservations, restrictions or conditions (or portions thereof) contained in this deed shall, for any reason, be held to be invalid, illegal or legally unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other portion of that provision or any other provision hereof (whether or not clearly divisible) from such provision or portion thereof), and the above reservations, restrictions and conditions shall be construed and interpreted in the manner which is valid, legal and legally enforceable, and which is most nearly consistent with the intention of Grantor and Grantee as evidenced by the above reservations, restrictions and conditions.

9. Marathon Petroleum Company LLC and its successors and assigns ("Marathon") reserved the right to have access to the Real Estate, at no cost to Marathon, at reasonable times to conduct any Corrective Action only as and when required by the governmental agency with

jurisdiction (the "Agency") in connection with a release of petroleum hydrocarbons on the Real Estate. As used herein, the term, "Corrective Action," shall refer to one or more of the following activities, investigation, assessment, monitoring, sampling, analysis, cleanup, removal, disposal, on-site treatment, off-site treatment, active remediation, passive remediation, remediation alternatives including, but not limited to, risk-based corrective action ("RBCA"), if applicable, and/or other activities concurred in or required by the Agency. In performing any Corrective Action at the Real Estate, Grantor will have the right to rely on and use any current, future or revised or amended state cleanup standards, guidelines or criteria or revised federal cleanup standards, if applicable, including without limitation any site-specific risk-based soil and groundwater cleanup objectives or other similar RBCA policies administered by the Agency. In performing any Corrective Action at the Real Estate, Marathon may also rely on and implement institutional controls as provided for in applicable laws, regulations and policies to ensure the protection of public health, safety or welfare and the environment. Grantee acknowledges that such institutional controls may require deed recordation running with the land at the Real Estate. Such deed recordation would contain certain restrictions based on site-specific exposure such as prohibiting the use of groundwater or requiring the Real Estate, or a portion of the Real Estate, to be paved or that existing pavement remain in place and be properly maintained. Grantee agrees to permit reasonable institutional controls regarding the Real Estate in connection with Grantor's performance of any Corrective Action thereon. Grantee agrees to provide Marathon, at no cost to Marathon, with Grantee's written consent and signature as needed in connection with the preparation, execution and recording of any necessary documents relating to any institutional controls which are to be recorded with the deed in accordance with Marathon's performance of Corrective Action. Such institutional controls, if necessary, would not prohibit the use of the Real Estate for industrial/commercial purposes. Marathon reserves its legal appeal rights with respect to any orders, directives or requests of the Agency concerning but not limited to Corrective Action at the Real Estate.

10. The Grantee shall not have any claim against Grantor or Marathon Petroleum Company LLC, its parents, affiliates, predecessors, successors, assigns, subsidiaries or their respective past, present and future officers, employees, agents and/or representatives (the "Released Parties"), based upon, related to or arising out of the presence of any contamination on, under or at the Real Estate. The Released Parties are hereby forever released from any and all such claims.

11. To reduce risks to human health and/or the environment, and to permit application of corrective action standards which are consistent with the non-residential use (or other lower-risk use) of the Real Estate, this conveyance is made by Grantor and accepted by Grantee upon the express condition and subject to the restrictions and covenants that (i) the use of the Real Estate shall be restricted solely to industrial/commercial use, (ii) the Real Estate shall not be used or occupied (if used or occupied at all) for residential purposes or for purposes of a child care or elder care facility, a nursing home facility or hospice, a hotel or motel, a medical or dental facility, a school, a park, or a hospital, (iii) any building constructed on the Real Estate shall have a slab-on-grade foundation with the top of the slab at or above surface level, (iv) in the event that any activities occur at the Real Estate that involve any digging, trenching or excavation of soils by Grantee, Grantee shall take proper precautions to ensure the protection of health, safety and the environmental, including but not limited to, testing the soils, providing

adequate notification and protection to workers, and proper handling and/or disposal of any contaminated soils in accordance with all applicable laws, rules and regulations, and (V) no water supply wells of any kind (including without limitation water wells used for drinking, bathing or other human consumption purposes and water wells used for livestock, farming or irrigation) shall be installed or used on the Real Estate (collectively, "Exposure Restriction"), provided, however, that the Exposure Restriction does not prohibit the installation or use of any compliance wells, or any groundwater monitoring, recovery or extraction wells or similar devices used for or related to the performance of assessments, remediation or any other corrective action on the Real Estate now or in the future.

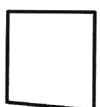
12. Grantee hereby agrees to indemnify, defend and hold harmless the Grantor and Marathon Petroleum Company LLC from and against any and all losses, damages, claims, suits or actions, judgments and costs (including without limitation reasonable attorney fees) that arise out of or relate to any violation of the reservations, restriction and/or conditions contained in this deed, including, but not limited to, any use of the Real Estate which is in violation of or inconsistent with the Exposure Restriction.

14659/31/0086246-4.B

KELTY TAPPY DESIGN, INC.
ARCHITECTURE • PLANNING • URBAN DESIGN
116 East Berry Street
Altoona, PA 16601
Phone: 781.426.7770



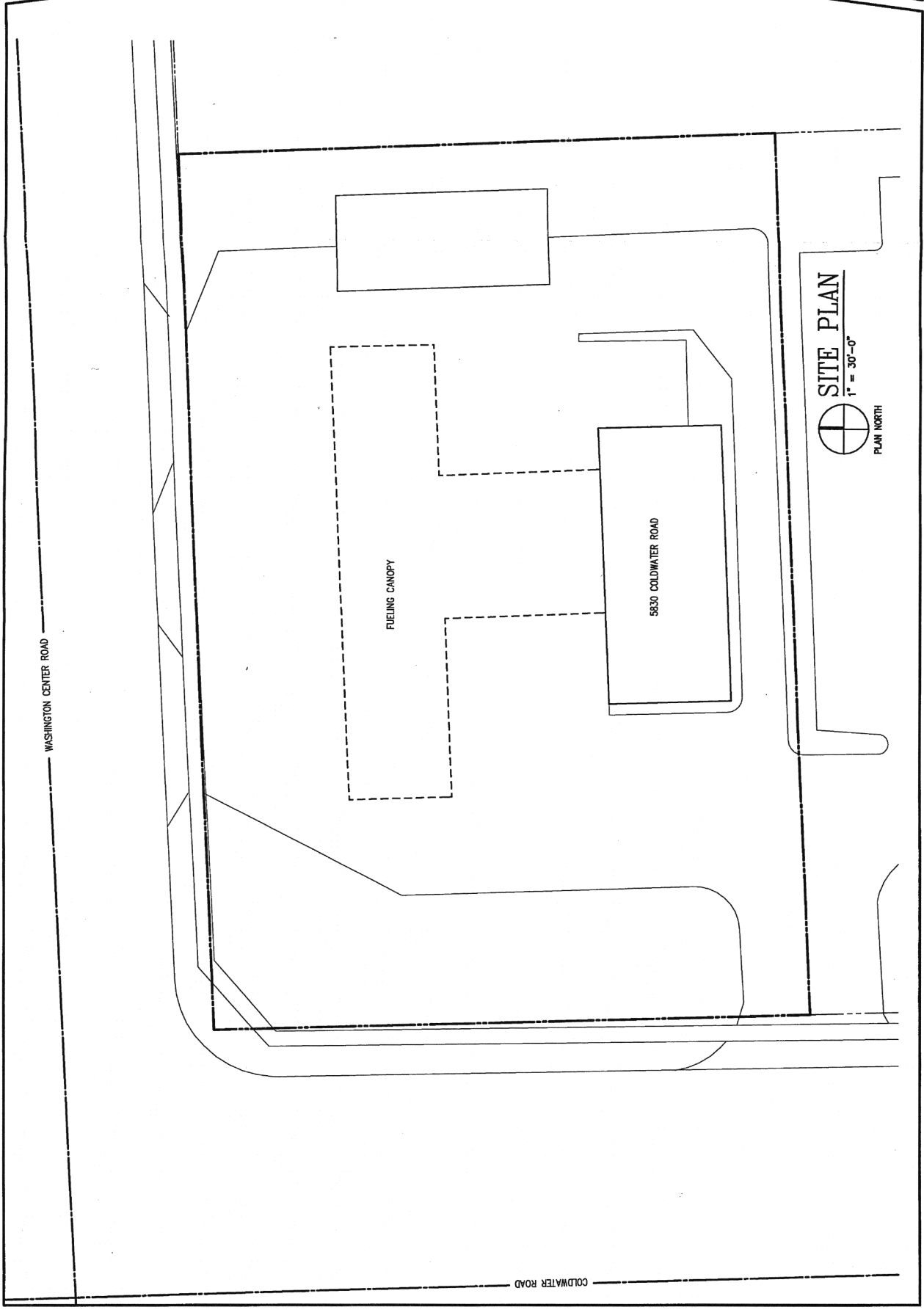
SITE PLAN FOR:
5830 COLDWATER ROAD



Dec. 29, 2021

21055

1 OF 1



SITE PLAN
1" = 30'-0"
PLAN NORTH

FACT SHEET

Case #	REZ-2022-0002	Bill #	Z-22-02-02	Project Start:	January 2021
APPLICANT:	Onkar Oil, 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 site is located at the southeast corner of the intersection of Coldwater Road and East Washington Center Road. The address of the subject property is 5830 Coldwater Road (Section 24 of Washington Township).				
LAND AREA:	Approximately 1.04 acres				
PRESENT ZONING:	C2/Limited Commercial				
PROPOSED ZONING:	C3/General Commercial				
COUNCIL DISTRICT:	3- Tom Didier				
SPONSOR:	City of Fort Wayne Plan Commission				

February 14, 2022 Public Hearing

- No one spoke in opposition.
- Tom Freistroffer, Justin Shurley and Rachel Tobin-Smith were absent.

February 21, 2021 Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

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

5-0 MOTION PASSED

- Paul Sauerteig, Justin Shurley and Rachel Tobin-Smith were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
March 8, 2022

PROJECT SUMMARY

SITE HISTORY:

- The site developed in the 1960's and 1970's.
- The site was rebuilt as a larger gas station around 1997.
- A zoning ordinance amendment limited gas stations to a special use in the C2/Limited Commercial zoning district. The amendment became effective on April 7, 2014.
- City Council proposed and approved a zoning ordinance amendment to remove gas stations as a special use in the C2 district, which became effective on April 22, 2019.

STAFF DISCUSSION:

The applicant, Onkar Oil, LLC, is seeking to rezone this gas station site from C2/Limited Commercial to C3/General Commercial. The site is at the southeast corner of Coldwater and East Washington Center Roads. This is generally a busy intersection, with both streets being classified as arterial. Exit 311 of Interstate 69 is just north of the site. Three of the four corners of the intersection are developed commercially with the southwest corner also containing a gas station in the C2 zoning district. Beyond the gas station are places like Northcrest Woods and Northcrest neighborhoods as well as shopping destinations like Coldwater Crossing. The site has intensified over the decades, including a rebuild of this gas station in the late 1990's. Today, the site has a convenience store, a T-shaped gas canopy, and a car wash building at the eastern border of the site. Recently, the City of Fort Wayne reengineered Coldwater Road to accommodate traffic calming measures, including a planted median in the middle of the road.

Given the freshness of the initiative to reduce the number of zoning districts where a gas station is permitted, staff would only recommend approval if a voluntary written commitment is submitted. Until the Zoning Ordinance Amendment in 2014, a gas station was a permitted use in the C2 zoning district. Today, gas stations in the C2 district that existed prior to 2014 became nonconforming. 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 agreed to submit a voluntary Written Commitment governing uses on the property. If approved, all but four C3 /General Commercial uses would be prohibited, as recommended by staff. 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. 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 the written commitment.

An additional benefit of rezoning to a C3 zoning district is that this zoning district has greater setbacks for development adjacent to residential zoning districts. For instance, the rear yard setback for a building adjacent to a residential district in a C3 district is 40', while the same setback in a C2 district is 25'. If a gas station were to expand in the future, the applicant will either need to adhere to the larger setback or file a petition with either the Plan Commission or Board of Zoning Appeals.

PUBLIC HEARING SUMMARY:

Presenter: Matt Kelty presented the proposal as outlined above.

Public Comments:

No one spoke in opposition

Post-Hearing: The applicants met with Plan Commission Staff and drafted a revised Written Commitment. A truck fueling station was removed from the permitted uses.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

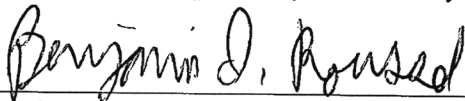
Rezoning Petition REZ-2022-0002

APPLICANT: Onkar Oil, 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 site is located at the southeast corner of the intersection of Coldwater Road and East Washington Center Road. The address of the subject property is 5830 Coldwater Road (Section 24 of Washington Township).
LAND AREA: Approximately 1.04 acres
PRESENT ZONING: C2/Limited Commercial
PROPOSED ZONING: C3/General Commercial

The Plan Commission recommends that Rezoning Petition REZ-2022-0002, 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 site is at the intersection of two arterial thoroughfares in northern Fort Wayne. Another gas station is established across Coldwater Road to the west. 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. Further investment when desired or necessary will fall within the constraints of the General Commercial (C3) zoning district.
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 February 21, 2022.



Benjamin J. Roussel
Executive Director
Secretary to the Commission

**Department of Planning Services
Rezoning Petition Application**

Applicant Mann Onkar Oil, LLC
 Address 624 East Lewis Street
 City Fort Wayne State IN Zip 46802
 Telephone 260-452-7728 E-mail _____

Contact Person Kelly Tappy Design, Inc. (Matt Kelly)
 Address 116 East Berry Street, Suite 700
 City Fort Wayne State IN Zip 46802
 Telephone 260-426-7770 E-mail matt@kellytappy.com

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

Allen County Planning Jurisdiction City of Fort Wayne Planning Jurisdiction
 Address of the property 5830 Coldwater Road, Fort Wayne, IN 46825
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.04 acres
 Proposed density (see attached site development schematic) _____ units per acre
 Township name Washington Township section # 0024
 Purpose of rezoning (attach additional page if necessary) Purpose of re-zoning is to accomplish zoning consistent with current use.

Sewer provider Fort Wayne Water provider Fort Wayne

Applications will not be accepted unless the following filing requirements are submitted with this application. Please refer to checklist for applicable filing fee and planning jurisdictional requirements.

Filing Requirements

- Applicable filing fee
- Applicable number of surveys showing area to be rezoned (plans must be filed)
- 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/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 \$0.15 per notice and a public notice fee of \$50.00 per instance each.

Mann Onkar _____ December 29, 2021
 (printed name of applicant) (signature of applicant) (date)
 Mann Onkar _____ December 29, 2021
 (printed name of property owner) (signature of property owner) (date)
 _____ (date)
 _____ (date)
 _____ (date)

Received	Receipt No.	Filing Date	Petition No.
12/30/21	139173	2/14/21	REZ-2022-0002



Rezoning Petition REZ-2022-0002 - 5830 Coldwater Road



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

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 1/19/2022



1 inch = 150 feet



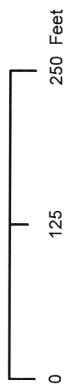
Rezoning Petition REZ-2022-0002 - 5830 Coldwater Road



STRATTON RD.

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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 1/19/2022



1 inch = 150 feet

WRITTEN COMMITMENT

This Written Commitment (this “Commitment”) is made effective as of the 21st day of February, 2022, by the Fort Wayne Plan Commission (“Plan Commission”).

RECITALS

A. By virtue of that certain Deed of Personal Representative dated **(date)** and recorded on **(date)** as Document Number **(document number)** 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. Onkar Oil, LLC (“Company”) filed an application under Case Number REZ-2022-0002 (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 Plan Commission is imposing this 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, the Plan Commission imposed a written commitment concerning the use and development of the Real Estate.

COMMITMENT

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

1. **PERMITTED USES.** All uses in the C2/Limited Commercial zoning district §157.217 of the Ordinance are permitted, as well as the following uses (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;

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. ***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.

8. ***STATUTORY AUTHORITY.*** This Commitment is made pursuant to I.C. §36-7-4-1015(a)(2).

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.

[SIGNATURE PAGE FOLLOWS.]

City of Fort Wayne Plan Commission

By: _____
Benjamin J. Roussel, Secretary to the Plan Commission

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this _____ day of _____, 2022, personally appeared Benjamin J. Roussel, as Secretary to the Plan Commission, and acknowledged the execution of the foregoing Written Commitment on behalf of the Plan Commission.

WITNESS my hand and Notarial Seal.

My commission expires:
July 21, 2028

Amanda Woenker, Notary Public
Resident of Allen, County, Indiana

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. Nathan W. Schall

Exhibit "A"
Legal Description of the Real Estate

Lot 10, Section A", Washington Center Place Addition, according to the Plat thereof, recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the office of the Recorder of Allen County, Indiana, except that part thereof appropriated for highway purposes under Allen Superior Court No. 3 Cause No. 5082 and except the North 20 feet of the above described real estate conveyed for highway purposes by instrument recorded as Document 70-15115, in the office of the Recorder of said County, and except the North 5 feet of Lot 10 as established by Instrument 70-15115, per Street Dedication dated September 16, 1974.

TOGETHER WITH:

Lot 11, Section A", Washington Center Place Addition, according to the Plat thereof, recorded in Plat Record 15, page 97, re-recorded in Plat Record 15, page 145, in the office of the Recorder of Allen County, Indiana, except that part thereof appropriated for highway purposes under Allen Superior Court No. 3 Cause No. 4898.

BILL NO. Z-22-02-02

REPORT OF COMMITTEE ON REGULATIONS

March 15, 2022

Tom Freistroffer Chair

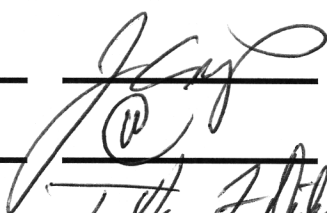
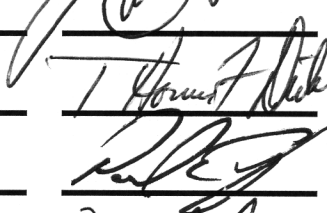
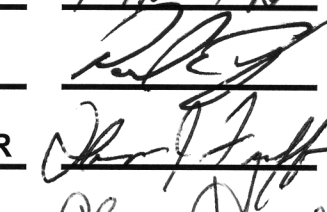
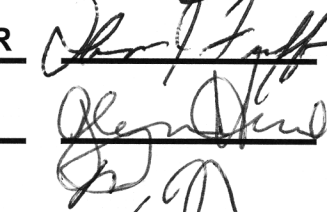
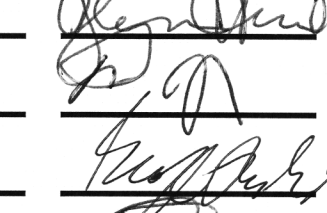
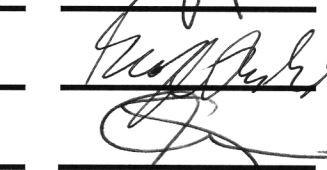


Paul Ensley Co-Chair

All Council Members

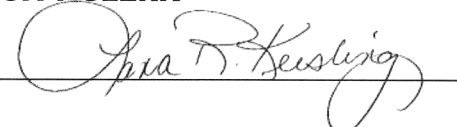
An Ordinance amending the City of Fort Wayne Zoning Map No. N-34 (Sec. 24 of Washington Township)

Rezone 1.04 acres from C2/Limited Commercial to C3/General Commercial with written commitment to restrict certain usages at 5830 Coldwater Rd, Onkar Oil LLC

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

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: February 14, 2022

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

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

Read the third time in full and on motion by Councilperson 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"/>
CHAMBERS	<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"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


DATED: March 22, 2022



 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Zoning Ordinance No. Z-22-02-02 on the 22nd day of March, 2022

ATTEST:



 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd of March 2022, at the hour of 10:15 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 23RD day of MARCH 2022, at the hour of 10:30 o'clock AM E.S.T.



 THOMAS C. HENRY, MAYOR

