

ORDINANCE 20-1392

AN ORDINANCE OF THE CITY OF WOODBURN, INDIANA COMMON COUNCIL CONSIDERING REZONING PETITION REZ-2020-0031

WHEREAS, the City Council of the City of Woodburn (the “City”), State of Indiana, pursuant to Indiana Code Section 36-7 et. seq., as amended, has authority to plan for and regulate the use and zoning of real property located within its municipal boundaries; and,

WHEREAS, the Allen County Plan Commission serves as the Plan Commission for the City; and,

WHEREAS, the Allen County Department of Planning Services serves as the Land Use staff for the City; and,

WHEREAS, petitioner Woodburn Real Estate LLC filed Rezoning Petition REZ-2020-0031 with the Allen County Department of Planning Services; and,

WHEREAS, the Allen County Plan Commission held a public hearing on this Petition on the 8th day of October, 2020; and,

WHEREAS, the Allen County Plan Commission held a business meeting on the 15th day of October 2020, and after deliberating, the Plan Commission adopted Findings of Fact for this Petition resolving to recommend the 0.7 acres of real estate referenced in the Petition be reclassified C3/General Commercial, with a Written Commitment to restrict certain uses;

WHEREAS, the Allen County Plan Commission, pursuant to I.C. Section 36-7-4-605(a)(2), by a vote of 9-0, certified the proposed rezoning with a DO PASS recommendation to the Woodburn City Council;

NOW THEREFORE, BE IT ORDAINED by the Woodburn City Council that, as the legislative body of the City of Woodburn, Indiana, the City Council concurs with the Plan Commission’s recommendation and hereby approves Rezoning Petition REZ-2020-0031 as attached hereto.

Adopted and Ordained this 2nd day of November, 2020.

WAIVER OF SECOND READING

On motion duly made and seconded, the second reading of the foregoing Ordinance was unanimously waived. After a motion to adopt the Ordinance was properly made, the results of which are below, the Ordinance was deemed effective as of the date of passage due to a majority vote of yea and approval of the Mayor.

COMMON COUNCIL OF THE CITY OF WOODBURN, INDIANA

By: Michael Voirol YEA X NAY _____ ABS _____
Michael Voirol, Councilman

By: Michael Martin YEA X NAY _____ ABS _____
Michael Martin, Councilman

By: Tonya Thompson YEA X NAY _____ ABS _____
Tonya Thompson, Councilman

By: Dean Gerig YEA X NAY _____ ABS _____
Dean Gerig, Councilman

By: NOT PRESENT YEA _____ NAY _____ ABS _____
Daniel Watts, Councilman

ATTEST:

By: Timothy Cummins
Timothy Cummins, Clerk-Treasurer

The foregoing ordinance passed by the Council is signed and approved (X) not approved () by me on the same date.

By: Joseph Kelsey
Joseph Kelsey, Mayor for the City of Woodburn

REZONING FACT SHEET

Petition #REZ-2020-0031		Project Start: September 2020	
APPLICANT:	Woodburn Real Estate, LLC		
REQUEST:	To rezone property from R1/Single Family Residential to C3/General Commercial to permit the existing uses on the site.		
LOCATION:	The site lies on the south side of the 22000 block of Main Street/State Road 101 and on the west side of the 4300 block of Becker Road. The address of the subject property is 22022 Main Street (Section 29 of Maumee Township).		
LAND AREA:	Approximately .7 acres		
PRESENT ZONING:	R1/Single Family Residential		
PROPOSED ZONING:	C3/General Commercial		

8 October 2020 Public Hearing

- No one from the public spoke at the public hearing.
- Adam Day was absent.

15 October 2020 Business Meeting

Plan Commission Recommendation: Do Pass with a Written Commitment

- A motion was made by Tom Harris and seconded by Jeff Sorg to return the ordinance to the City of Woodburn Council for their final decision.
- All members were present.
- 9-0 **MOTION PASSED**

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
October 22, 2020

Reviewed By:



Kimberly R. Bowman, Executive Director
Secretary to the Commission

PROJECT SUMMARY

- The site has been used for commercial use for decades
- A development standards variance was granted in 1995 for setbacks associated with installation of a gas canopy for the site. The property was zoned RS-1 at the time.

STAFF DISCUSSION:

The petitioner requests a rezoning from R1/Single Family Residential to C3/General Commercial to allow the existing use of the property to comply with the current zoning ordinance. The existing gas station, convenience store, and canopy are located along the south side of Main Street (State Road 101), west of Becker Road. It appears from available records that the commercial uses of the site have remained zoned residentially for decades. In 1995, a development standards variance was granted for the gas canopy to be located in its current location. The zoning was residential at that time. The proposal to C3/General Commercial would permit both the gas station and convenience store uses.

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 along the State Road 101 corridors, which is a mixed-use corridor through the City of Woodburn. 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.

After the recommendation from the Allen County Plan Commission, the Woodburn City Council will consider the rezoning petition.

PUBLIC HEARING SUMMARY:

Presenter: Scott Federoff, representing Woodburn Real Estate, LLC, presented the request as outlined above.

Public Comments:
none

COMES NOW the Advisory Plan Commission of the County of Allen, State of Indiana, pursuant to authority vested in it by Indiana Code § 36-7-4 et.seq. and Allen County Code Title 3, both as amended, and adopts the following resolution.

**Resolution of the
Allen County Plan Commission
Regarding Zoning Map Amendment**

WHEREAS the Allen County Department of Planning Services received a proposed map amendment to Title 3 of the Allen County Code (the Zoning Ordinance) on September 1, 2020 which it designated subsequently as Rezoning Petition REZ-2020-0031; and,

WHEREAS the Allen County Department of Planning Services provided for publication of a public hearing notice on the proposed map amendment in *The Journal Gazette* according to law; and,

WHEREAS the Allen County Plan Commission conducted a public hearing on the proposed map amendment on October 8, 2020; and,

WHEREAS the Allen County Plan Commission considered the petition in light of comprehensive plan and the zoning ordinance requirements; now, therefore,

BE IT RESOLVED by the Allen County Plan Commission, meeting in open session, that a resolution and proposed ordinance be sent to the City Council of Woodburn recommending that the proposed map amendment **Do Pass** approximately 0.7 acres to C3/General Commercial with a Written Commitment to restrict certain uses;

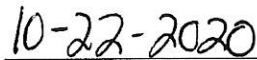
BE IT FURTHER RESOLVED that the Allen County Plan Commission's Findings of Fact setting forth its reasons for this recommended action be included with the resolution and proposed ordinance resolving Rezoning Petition REZ-2020-0031; and,

BE IT FINALLY RESOLVED that the Executive Director of the Allen County Department of Planning Services be directed to execute this Resolution on behalf of the Allen County Plan Commission and to present a copy of it to the City Council of Woodburn;

ADOPTED THIS 15th day of October 2020.



Kimberly R. Bowman, AICP
Executive Director, ACDPS
Secretary to the Allen County Plan Commission



Date of Signature

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Woodburn Real Estate LLC
Address 22022 Main Street
City Woodburn State IN Zip 46797
Telephone 260-632-0279 E-mail hoosiergroup@hotmail.com

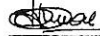
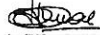
Contact Person
Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
Address 4211 Clubview Drive
City Fort Wayne State IN Zip 46804
Telephone 260-602-8000 E-mail smf@smfklaw.com

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

Request
☒ Allen County Planning Jurisdiction ☐ City of Fort Wayne Planning Jurisdiction
Address of the property 22022 Main Street, Woodburn, IN 46797
Present Zoning R1 Proposed Zoning C3 Acreage to be rezoned 0.681
Proposed density 1 units per acre
Township name Maumee Township section # 29
Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Woodburn Zoning Ordinance.
Sewer provider City of Woodburn Water provider City of Woodburn

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.

Woodburn Real Estate LLC, by Krishan Kumar, Manager		08/20/2020
(printed name of applicant)	(signature of applicant)	(date)
Woodburn Real Estate LLC, by Krishan Kumar, Manager		08/20/2020
(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.
8/25/2020	134992	10-8-2020	REZ-2020-0031

Fort Wayne, Indiana 46866

Fax: (219) 482-6855

Anderson Surveying, Inc.

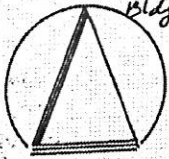
CERTIFICATE OF SURVEY

This document is a record of a resurvey of land and real estate prepared in conformity with established rules of surveying and made in accordance with the records or plat on file in the Recorder's Office of Allen County, State of Indiana. The land described exists in full dimensions as shown hereon in feet. It is free from encroachments by adjoining land owners unless specifically stated below. Corners were perpetuated as indicated.

SEE SURVEYOR'S REPORT FOR DESCRIPTION OF REAL ESTATE

22022 Woodburn Arms Length

Calc
fcty
Bldg
2,983
10,000
117,032
130,015



SCALE: 1" = 60.0'

0 30 60 120

N.E. COR. N.W. 1/4
SEC. 29-31-15
A.K.A. H.D. (100)
(ALLEN CO. REF.)

L = 519.5
L = 224.03
CH = 222.30

STATE ROAD #101
273.20' MEAS.

NET AREA =
0.681 ACRES

F. R. KNOBLAUCH
(9/16/80) #116073

456.60' MEAS.
153' REC.

WOODBURN METHODIST CHURCH
(6/21/67)
#A27606

C. I. L. FARVER
(12/27/73)
#G10142

S.E. COR. N.W. 1/4
SEC. 29-31-15
(ALLEN CO. REF.)
HARRISON TWP.

W. M. ANDERSON
REGISTERED

185.0'
MEAS. REC.

GERNHARDT STREET

WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the 8th day of October, 2020, by Woodburn Real Estate LLC, an Indiana limited liability company ("Company").

RECITALS

A. By virtue of that certain Warranty Deed recorded on January 2, 2020 as Document Number 20200000224 in the Office of the Recorder of Allen County, Indiana, Company is the owner of record in fee simple of certain real estate located in Allen County, Indiana, which is legally described in the addendum attached to this Commitment as Exhibit "A" (the "Real Estate").

B. Company filed an application under Case Number REZ-20209-00___ (the "Rezoning Application") to change the zoning map applicable to the Real Estate from the R1 Zoning District to the C3 Zoning District.

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

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

COMMITMENT

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

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

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

2. **ENFORCEMENT RIGHTS.** The Fort Wayne Zoning Administrator (the "Zoning Administrator") and the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of an obligation in this Commitment; and in the event such an enforcement action is commenced, the Zoning Administrator or the Plan Commission (as applicable) shall have the remedies allowed by the Ordinance (or the ordinance governing the Real Estate at the time of the enforcement action) and I.C. §36-7-4-1015, which remedies shall be cumulative and not exclusive. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Zoning Administrator or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

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

4. **SUCCESSORS AND ASSIGNS.** This Commitment and the restrictions set forth above shall inure to the benefit of: (a) all persons who own property comprising the Real Estate, and their successors and assigns; and (b) the Zoning Administrator and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate.

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

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

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

8. **PERMITS.** No permits shall be issued under the Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County Recorder. The

Declarant shall deliver to the Zoning Administrator and the Plan Commission an executed and recorded copy of this Commitment.

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

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

[SIGNATURE PAGE FOLLOWS.]

Woodburn Real Estate LLC,
an Indiana limited liability company

By: _____
Krishan Kumar, Manager

“Company”

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this ____ day of October, 2020, personally appeared Krishan Kumar, as Manager of Woodburn Real Estate LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:
June 28, 2028

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

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

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Scott M. Federoff

Exhibit "A"
Legal Description of the Real Estate

Part of the East Half of the Northwest Quarter of Section 29, Township 31 North, Range 15 East, Allen County, Indiana, more particularly described as follows, to wit:

Beginning at the Northeast corner of said Northwest Quarter; thence South, on and along the East line of said Northwest Quarter, being within the right-of-way of Gernhardt Street, a distance of 185.0 feet; thence West on a line which is at right angles with said East line, a distance of 456.6 feet (recorded 453.0 feet) to a point on the centerline of Indiana State Road #101; thence Northeasterly, by an interior angle of $27^{\circ}-36'$, on and along said centerline a distance of 273.2 feet to the point of curvature of a regular curve to the right having a radius of 519.5 feet; thence Northeasterly, on and along said centerline, being defined by said curve, an arc distance of 224.03 feet (the chord of which deflects right from the last described course by an angle of $12^{\circ}-21'$ for a length of 222.30 feet) to the point of beginning, containing 0.681 acres of land.