

(Amend 8-0)

ORDINANCE 05-04

TO AMEND THE BLOOMINGTON ZONING MAPS FROM IL/IS TO CG
Re: 1615 W. 3rd Street
(Kenneth Nunn, Petitioner)

WHEREAS, on May 1, 1995 the Common Council adopted Ordinance 95-21, which repealed and replaced Title 20 of the Bloomington Municipal Code entitled "Zoning", including the incorporated zoning maps, and Title 21, entitled "Land Use and Development;" and

WHEREAS, the Plan Commission has considered this case, ZO-34-04, and recommended that the petitioner, Kenneth Nunn, be granted a rezone of the property located at 1615 W. 3rd Street from Limited Industrial with the Special Industrial Overlay to General Commercial. The Plan Commission thereby requests that the Common Council consider this petition;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

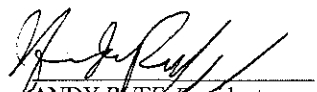
SECTION I. Through the authority of IC 36-7-4 and pursuant to Chapter 20.05.07 of the Bloomington Municipal Code, the property located at 1615 West 3rd Street be rezoned from Limited Industrial with the Special Industrial Overlay (IL/IS) to General Commercial (CG), including certain binding zoning commitments which shall be recorded with the Monroe County Recorder. The property is further described as follows:

A part of Lots 4 thru 8 in Lake View Park Addition, a subdivision of seminary lots 139, 140, 141, and 142, in the City of Bloomington, Indiana as shown by the plat recorded in plat cabinet B, envelope 42, in the office of the Recorder of Monroe County, Indiana, being more particularly describes as follows:

Commencing at a brass monument marking the Northwest corner of Section 5 Township 8 North, Range 1 West Monroe County, Indiana; thence South 88 degrees 58 minutes 17 seconds East along the north line of said section for a distance of 220.60 feet; thence South 01 degrees 31 minutes 59 seconds West along the west line of lot 4 in said Lake View Park Addition for a distance of 44.82 feet to the south right-of-way of 3rd Street to a rebar with cap stamped Sna marking the Point of Beginning; thence South 88 degrees 57 minutes 34 seconds East along the south right-of-way of 3rd Street for a distance of 367.58 feet to a rebar with cap stamped SNA; thence South 01 degrees 30 minutes 45 seconds East along the east line of lot 8 in said Lake View Addition for a distance of 186.89 feet to a chiseled x in concrete; thence North 88 degrees 59 minutes 43 seconds West for a distance of 73.50 feet to a chiseled x in concrete; thence South 01 degrees 31 minute 59 seconds East along the east line of lot 7 in said Lake View Addition for a distance of 70.00 feet to a mag nail; thence North 88 degrees 59 minutes 43 seconds West for a distance of 294.00 feet to a rebar with cap stamped Bledsoe Tapp; thence North 01 degrees 31 minutes 59 seconds West along the west line of lot 4 in said Lake View Addition for a distance of 257.21 feet to the Point of Beginning, containing 2.45 acre more or less.

SECTION II. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 16th day of February, 2005.


ANDY RUFF, President
Bloomington Common Council

ATTEST:

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this
17th day of February, 2005.

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 17th day of FEBRUARY,
2005.

Mark Kruzan
MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance rezones approximately 2.45 acres of vacant property at 1615 West 3rd Street from Limited Industrial (IL) with the Special Industrial Overlay (IS) to General Commercial (CG). This petition also includes a binding zoning commitment concerning site planning assurances that will be recorded with the Monroe County Recorder.

Signed copies to:
legal (5)
planning
controller
petitioner

clerk
file
CA/CA(2)

ORDINANCE CERTIFICATION

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 05-04 is a true and complete copy of Plan Commission Case Number ZO-34-04 which was given a recommendation of approval by a vote of 8 Ayes, 0 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on January 10, 2005.

Date: January 18, 2005



 Thomas B. Micuda, Secretary
 Plan Commission

Received by the Common Council Office this 18th day of JANUARY, 2005.



 Regina Moore, City Clerk

| | | |
|------------------------------------|---|--------------------|
| Appropriation Ordinance # _____ | Fiscal Impact Statement Ordinance # _____ | Resolution # _____ |
|------------------------------------|---|--------------------|

Type of Legislation:

| | | |
|--|---|---|
| Appropriation Budget Transfer Salary Change Zoning Change New Fees | End of Program New Program Bonding Investments Annexation | Penal Ordinance Grant Approval Administrative Change Short-Term Borrowing Other |
|--|---|---|

If the legislation directly affects City funds, the following must be completed by the City Controller:

Cause of Request:

| | |
|---------------------------|-----------------|
| Planned Expenditure _____ | Emergency _____ |
| Unforeseen Need _____ | Other _____ |

Funds Affected by Request:

| | | |
|--------------------------------------|----------|----------|
| Fund(s) Affected | | |
| Fund Balance as of January 1 | \$ _____ | \$ _____ |
| Revenue to Date | \$ _____ | \$ _____ |
| Revenue Expected for Rest of year | \$ _____ | \$ _____ |
| Appropriations to Date | \$ _____ | \$ _____ |
| Unappropriated Balance | \$ _____ | \$ _____ |
| Effect of Proposed Legislation (+/-) | \$ _____ | \$ _____ |
| Projected Balance | \$ _____ | \$ _____ |

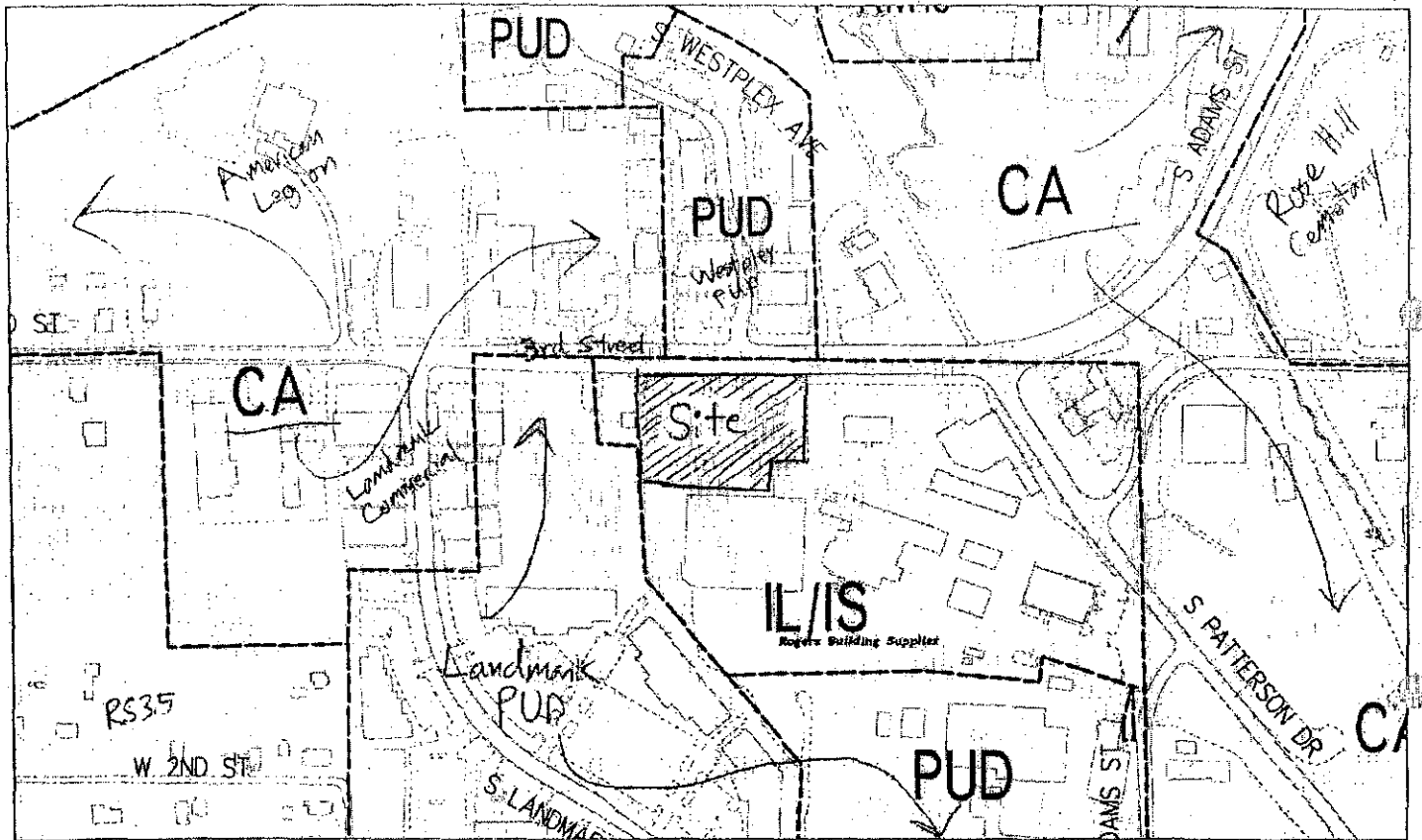
Signature of Controller

Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues?

Yes _____ No _____

If the legislation will not have a major fiscal impact, explain briefly the reason for your conclusion.

If the legislation will have a major fiscal impact, explain briefly what the effect on City costs and revenues will be and include factors which could lead to significant additional expenditures in the future. Be as specific as possible. (Continue on second sheet if necessary.)



Location, Zoning and land use

20-34-04

By: roachja
1 Dec 04



For reference only; map information NOT warranted.

City of Bloomington
Planning



Scale: 1" = 300'

5

Interdepartmental Memo

To: Members of the Common Council
From: James Roach, Senior Zoning Planner
Subject: Case # ZO-34-04
Date: January 24, 2005

Attached are the staff report, petitioner's statement, and map exhibits which pertain to Plan Commission Case # ZO-34-04. The Plan Commission heard this petition at its January 10, 2005 meeting and voted 8-0 to send this petition to the Common Council with a favorable recommendation.

REQUEST: The petitioner is requesting that the property be rezoned from Limited Industrial with the Special Industrial Overlay (IL/IS) to General Commercial (CG).

BACKGROUND:

Area: 2.45 acres
Current Zoning: IL/IS
GPP Designation: Community Activity Center (CAC)
Existing Land Use: Vacant
Surrounding Uses: **South, East** – industrial (Rogers Building Supply)
West – commercial (Landmark PUD)
North – commercial, industrial (Westplex PUD)

REPORT SUMMARY: The property in question includes 5 vacant lots on the south side of W. 3rd Street, between Patterson Drive and Landmark Avenue. The property has been zoned for industrial uses since 1973. Until 1995, it was zoned General Manufacturing (MG). In 1995, the industrial zoning was carried forward for the property due to the past zoning and adjacent industrial use to the east. The property is currently zoned Limited Industrial with the Special Industrial Overlay (IL/IS).

The property is bounded by the Rogers Building Supply site to the south and east. To the west is a small commercial parcel also zoned IL/IS and vacant commercial portions of the Landmark PUD. On the north side of W. 3rd Street are several commercial uses including a car wash, offices and a multi-tenant center. These properties are zoned CA and PUD (Westplex PUD).

The property has a significant grade change of approximately 26 feet from north to south. Northern parts of these lots were filled as a result of the 5th/3rd/Adams curve reconstruction project. The southern parts of the properties include a drainage way and some scattered trees.

While the petitioner originally requested that the zoning of these lots be changed from IL/IS to CA, the Plan Commission recommends the zoning be changed to

General Commercial (CG). The petitioner has agreed to this change. The rezoning is desired to market this property to someone who would develop it with a permitted CG use, or it could possibly be developed by the petitioner.

The Plan Commission found that commercial zoning is appropriate for this property and is supported by the policies of the GPP. The small size of the property (less than 3 acres) makes it unattractive for any large scale manufacturing uses. The GPP designates this property as a Community Activity Center (CAC) and notes that CACs should, in general, be developed with retail and service uses. The GPP states that these areas should contain a balance of different types of uses.

The Plan Commission also found that the General Commercial (CG) zoning designation was a more appropriate designation to fulfill the GPP policies outlined below. CG zoning allows for all of the same uses as CA with the exception of some drive through uses, outdoor retail uses (such as automobile sales), kennels, mini-warehouses and cellular telephone towers. CG zoning is also more appropriate at this location because the site is along a heavily traveled curved road. This curve makes more intensive automobile oriented uses allowed under CA zoning less desirable because of potential travel conflicts on W. 3rd Street.

While a Planned Unit Development (PUD) was considered a possibility, the Plan Commission did not recommend this type of zoning. This property is smaller than the three acres required for PUDs, and the property does not provide a good opportunity for mixed uses or common open space as envisioned by the PUD process. In addition, the petitioner has proposed site planning related commitments that achieve many of the desirable outcomes associated with PUD zoning.

GROWTH POLICIES PLAN: The GPP designates these lots as part of a Community Activity Center (CAC). These lots are also part of the Adams Street/Patterson Drive Subarea. Relevant pages from the GPP have been included in the packet.

The GPP states that that the primary land use for a CAC should be "medium scaled commercial retail and service uses." The CAC should include a "balance of land uses to take advantage of the proximity to goods and services." Public gathering spaces are noted as an important component of larger acreage CAC tracts and could be used as an incentive to "allow additional residential units or commercial space." Other important site planning considerations for CACs include buildings built with minimal street setbacks, placement of parking to minimize pedestrian obstacles, reduction of street cuts, and incentives to provide second story residential units.

The GPP states that the Adams Street/Patterson Drive Subarea is a conglomeration of "underdeveloped or underutilized properties that are largely zoned commercial" and is a "prime area for redevelopment." The GPP states that the "goal of this Subarea is to upgrade site planning quality through development and redevelopment, while insuring a dense mixture of service uses." Additional site planning considerations noted by the GPP include the need to accommodate transit services, provide site designs that promote non-vehicular access, ensure tight access control onto 3rd Street, and increase landscaping and building forward design.

SITE DESIGN COMMITMENT: The petitioner and the Planning staff worked between the first and second Plan Commission meetings to write and revise a zoning commitment that would be recorded as part of this petition. The Plan Commission required that this zoning commitment be recorded within one month of a positive Council action. These commitments ensure that the property is developed in a nature consistent with the Growth Policies Plan. The commitment is broken down as follows:

- a. **Architecture:** The commitment states that no buildings shall be constructed that have metal siding or more than 30% of any side visible from 3rd Street clad in vinyl siding or smooth faced concrete. Building(s) shall not have a roof with a pitch less than 4:12 to create more of a residential feel.
- b. **Access:** The commitment limits the property to one access to 3rd street, which must be aligned with Westplex Ave. This does leave open the possibility of a secondary access, like a "right-out only" after review of a specific site plan.
- c. **Building Forward:** The petitioner has committed to a "building forward" design for any future development. To ensure this type of design, the commitment states that future site plans shall "[limit] parking north of any structures" and "between a structure and Third Street." The owner has also committed that "at least 40% of the Third Street frontage shall be developed with buildings at the building setback line."
- d. **Streetscape:** The petitioner has committed to replacement of the existing sidewalk at the back of the right-of-way, planting of street trees, additional plantings along the right-of-way to enhance the streetscape and a pedestrian entrance for buildings along W. 3rd Street.
- e. **Right-of-way:** The petitioner has committed to dedicating the right-of-way needed to match the Thoroughfare Plan, approximately 5 feet, but does not specify a time period for this dedication. This right-of-way must be dedicated prior to approval of any site plans for this property.

- f. **Easements:** Easements will be provided as needed for drainage, utilities and cross access to adjacent properties.
- g. **Connectivity:** The petitioner has committed to providing connectivity between the RBS property to the east and to the vacant Landmark PUD property to the west. Connectivity to the south is limited by the change in grade and a drainageway.

RECOMMENDATION: The Plan Commission voted 8-0 to recommend approval of a rezoning to General Commercial with the following conditions:

1. The presented zoning commitment shall be signed, notarized and recorded within one (1) month of a positive finding by the Common Council. Any future owners of this property shall be bound by these commitments.
2. New right-of-way dedication of approximately 5 feet from the edge of the existing right-of-way shall take place prior to approval of any site plans for the property.
3. Commitment D shall be amended to include a commitment for a pedestrian entrance along W. 3rd Street. **(Completed)**
4. Commitment F shall be amended to include a commitment for a cross access easement along the main drives and connection points to adjacent properties to ensure connectivity. **(Completed)**
5. The commitment must include all required parts of the zoning ordinance, including Sections 20.05.07.04 and 20.02.01.00 (commitment) as outlined by e-mail from City Attorney Tricia Bernens dated 1/10/05. Final approval of document wording by the City Legal Department is required prior to recording. **(Completed)**

**BLOOMINGTON PLAN COMMISSION
PRELIMINARY REPORT
LOCATION: 1615 W. 3rd Street**

**CASE NO: ZO-34-04
DATE: December 6, 2004**

PETITIONER: Kenneth Nunn
123 S. College Ave, Bloomington

COUNSEL: Mike Carmin
Andrews, Harrell, Mann, Carmin and Parker
400 W. 7th Street, Bloomington

REQUEST: The petitioner is requesting that the property be rezoned from Limited Industrial with the Special Industrial Overlay (IL/IS) to Arterial Commercial (CA).

BACKGROUND:

Area: 2.45 acres
Current Zoning: IL/IS
GPP Designation: Community Activity Center
Existing Land Use: Vacant
Surrounding Uses: **South, southeast** – industrial (Rogers Building Supplies)
West, southwest – commercial (Landmark PUD)
North – commercial, industrial (Westplex PUD)

REPORT SUMMARY: The property in question includes 5 vacant lots on the south side of W. 3rd Street, between Patterson Drive and Landmark Avenue. The property has been zoned for industrial uses since 1973. Until 1995, it was zoned General Manufacturing (MG). In 1995, the industrial zoning was carried forward for the property due to the past zoning and adjacent industrial uses. The property is currently zoned Limited Industrial with the Special Industrial Overlay (IL/IS).

The property is bounded by Rogers Building Supplies site to the south and east. To the west is a small commercial parcel also zoned IL/IS and vacant commercial portions of the Landmark PUD. On the north side of W. 3rd Street are several commercial uses including a car wash, offices and a multi-tenant center. These properties are zoned CA and PUD (Westplex PUD).

The property has a severe grade change of approximately 26 feet from north to south. Northern parts of these lots were filled as a result of the 5th/3rd/Adams curve reconstruction project. The southern parts of the properties includes a drainage way and some scattered trees.

The petitioner would like the zoning of these lots to be changed from IL/IS to CA. The rezoning is desired to market this property to someone who would develop it with a permitted CA use, or it could possibly be developed by the petitioner. The

petitioner has stated a willingness to place deed restrictions on the property as part of this petition to ensure a development type that will meet the guidelines of the GPP. Based on comments received at the first hearing, the petitioner is willing to formulate a recordable commitment for consideration.

GROWTH POLICIES PLAN: The GPP designates these lots as part of a Community Activity Center (CAC). These lots are also part of the Adams Street/Patterson Drive Subarea. Relevant pages from the GPP have been included in the packet.

The GPP states that the primary land use for a CAC should be "medium scaled commercial retail and service uses." The CAC should include a "balance of land uses to take advantage of the proximity to goods and services." Public gathering spaces are noted as an important component of larger acreage CAC tracts and could be used as an incentive to "allow additional residential units or commercial space." The GPP also notes that in new development or redevelopment projects, existing overhead utilities should be placed underground to avoid conflicts with trees and landscaping. Other important site planning considerations for CACs include buildings built with minimal street setbacks, placement of parking to minimize pedestrian obstacles, reduction of street cuts, and incentives to provide second story residential units.

The GPP states that the Adams Street/Patterson Drive Subarea is a conglomeration of "underdeveloped or underutilized properties that are largely zoned commercial" and is a "prime area for redevelopment." The GPP states that the "goal of this Subarea is to upgrade site planning quality through development and redevelopment, while insuring a dense mixture of service uses."

The GPP further notes that road upgrades in the area will "spark investment toward commercial retail" uses, but that the Plan Commission should balance these market demands with the need to also develop other types of uses, including employment uses. Additional site planning considerations noted by the GPP include the need to accommodate transit services, provide site designs that promote non-vehicular access, ensure tight access control onto 3rd Street, and increase landscaping and building forward design.

REPORT: Staff believes that there are four critical questions that must be answered when reviewing this rezoning request. Should the zoning be changed? When should the zoning be changed? What is the most appropriate commercial zoning? If the zoning is changed, what type of site commitments should be required?

Question #1. Should the zoning be changed? The current IL/IS zoning on the property does not reflect any previous use of the property. In addition, the small size of the property (less than 3 acres) makes it unattractive for any

large scale manufacturing uses. The GPP notes that CACs should, in general, be developed with retail and service uses and that this area is a prime area for redevelopment. The GPP states that these areas should contain a balance of different types of uses. It should be noted that the Plan Commission and City Council recently approved an expansion on the Landmark PUD in this general area along 2nd Street/Bloomfield Road. This land was rezoned from IL/IS to a commercial PUD.

Question #2. When should the zoning be changed? The timing of this request may be the crucial issue. The Planning Department is currently developing a first draft of changes to the Zoning Ordinance, Subdivision Control Ordinance and Zoning Maps. A steering committee will convene in early 2005 to look at the drafts. Several public hearings will also be held to discuss the updates. It is possible that this property will be rezoned as part the upcoming ordinance changes. The Plan Commission should determine if it is more appropriate for this petition to wait until the Plan Commission and Council reviews the updates to the entire zoning map.

Another item to consider are the proposed recorded zoning commitments associated with this petition. With a zoning change as part of a larger city wide map update, the Plan Commission would not be able to require these types of site development commitments to be recorded.

Question #3. What is the most appropriate commercial zoning? If the Plan Commission finds that the property should be rezoned for commercial use, it must determine the appropriate commercial zoning district. The petitioner has requested CA zoning. CA zoning allows for the widest list of permitted uses in the current zoning ordinance. It allows for multi-family, commercial and retail uses. While properties to the northwest and northeast of this site currently have CA zoning, General Commercial (CG) zoning should also be considered. CG zoning allows for all of the same uses as CA with a few notable exceptions. CG zoning does not allow the following uses: drive through uses unless they serve another permitted use, outdoor retail uses such as automobile sales, kennels, mini-warehouses, newspaper printing, nurseries/greenhouses, radio/TV stations and cellular telephone towers. This property is located along a scenic/gateway corridor, which may make some of the automobile oriented uses of the CA district less desirable from an aesthetic point of view.

Another possible zoning district for this property would be Planned Unit Development (PUD). The Zoning Ordinance currently requires that industrial uses in the Special Industrial Overlay request PUD approval for any change of use. This provision was created to give neighborhoods near these districts assurances of an open public process for a change in use of an imbedded industrial use. This property does not contain an industrial use and is smaller than the three acres required for PUDs. While a PUD would give the Plan

Commission and Council maximum flexibility in requiring site commitments and use restrictions, this property does not provide a good opportunity for mixed uses or open space preservation as envisioned by the PUD process.

Question #4. If the zoning is changed, what type of site commitments should be required? The petitioner has suggested that he record a zoning commitment with the rezoning to ensure that the property is developed in a nature consistent with the Growth Policies Plan. If the Plan Commission is inclined to approve this rezoning request, staff requests comments as to what type of zoning commitments are appropriate for this site. Examples of possible commitments for discussion include architectural design and materials, connections to neighboring properties, building forward design, a limitation on curb cuts, transit accommodations, 3rd street "streetscape" improvements and commitments to second floor residential uses.

SITE DESIGN ISSUES: If the Plan Commission finds that a rezoning is appropriate at this time, staff requests direction on the following site design issues.

Access and Connectivity: The property currently gains access to W. 3rd Street via four curb cuts. These cuts were created with the 5th/3rd/Adams curve redesign project to serve the existing multiple lot configuration. Staff would recommend limiting the number of access points to the property. The primary access should align with Westplex Ave. to the north.

In addition to direct access to 3rd Street, cross connections to adjacent properties are highly desirable. Cross connections can allow both vehicles and pedestrians to travel between uses without exiting first onto adjacent arterial roadways. A zoning commitment could be recorded to provide cross access easements to the RBS property and the un-built portions of the Landmark PUD. These connections would be constructed when this site develops and would be completed when neighboring properties develop or are redeveloped.

Building Forward: Another possible recorded zoning commitment would concern architecture and "building forward" design. A zoning commitment could be recorded that would place a certain percentage of any future building at the building setback. If desired as part of a commitment, staff recommends that somewhere between 40% and 60% of the lot frontage be filled out with a building façade. This would place the parking at the side or rear of the building. In addition, a pedestrian scaled entrance on 3rd Street would enhance the streetscape and fulfill many of the policies of the GPP.

Pedestrian Facilities: A sidewalk has already been constructed on the south side of W. 3rd street. This sidewalk is immediately adjacent to the curb on this busy Primary Arterial. The Plan Commission must determine whether or not the petitioner should remove the existing sidewalk and replace it with a sidewalk

separated from the street with a tree plot, or allow it to remain in place.

Development/Enforcement History: The petitioner, an attorney, has a limited development history that is mostly linked to his law practice. Although never completed, the BZA approved a use variance in 1997 for the petitioner to expand his downtown office into an adjacent building. The petitioner's only other development history is the construction of a new building to house his law practice on Franklin Road, adjacent to SR 37. Construction of the building is nearing completion. This development did have some zoning violations, but the petitioner quickly worked to remedy them. There are no outstanding violations regarding this petitioner.

SUMMARY: The Plan Commission must determine if this property should be rezoned to CA at this time. Specifically, staff would like the Plan Commission to answer the four critical questions posed in this report. They are as follows:

- Should the zoning be changed?
- When should the zoning be changed?
- What is the most appropriate zoning district?
- If the zoning is changed, what type of site commitments should be required?

RECOMMENDATION: Staff recommends that this rezoning request be forwarded to the January 10, 2005 Plan Commission meeting.

| CA Permitted Uses | CG Permitted Uses |
|---|--|
| <p>Amusement arcade Animal hospitals and veterinarians' offices</p> <p>Auditoriums Automotive repair Bars and taverns Bed and breakfast Brewpub Building trade shops Business service Car washes Churches Community centers Convalescent, nursing, or rest home Cultural facilities Day care centers Drive-through facilities</p> <p>Financial institutions Fire stations Gasoline service station Home occupations Hotels and motels Kennels Lodge halls Mini-warehouses Minor communications facilities Mortuaries/crematoriums Multifamily dwellings Newspaper printing Nurseries/greenhouses Offices Parking lots and garages Personal service Police stations Radio/TV stations Recreation centers Residential care homes Restaurants Retail sales, indoor and outdoor Rooming/lodging houses Schools, elementary, middle, and high Schools, trade and business Single-family detached dwellings Social service uses Theaters, indoor Utility substations and transmission facilities Wholesale trade</p> | <p>Amusement arcade Animal hospitals and veterinarians' offices Appliance and furniture repair Auditoriums Automotive repair Bars and taverns Bed and breakfast Brewpub</p> <p>Business services (indoor only) Car washes Churches Community centers Convalescent, nursing and rest homes Cultural facilities Day care centers Drive-through facilities serving another permitted use Financial institutions Fire stations Gasoline service stations Home occupations Hotels and motels</p> <p>Lodge halls</p> <p>Mortuaries Multi-family dwellings</p> <p>Offices Parking lots and garages Personal services Police stations</p> <p>Recreation centers Residential care homes Restaurants Retail sales (indoor only) Rooming/lodging houses Schools, elementary, middle, and high Schools, trade and business Single-family detached dwellings Social service uses Theaters, indoor Utility substations and transmission facilities Wholesale sales (indoor only)</p> |

ANDREWS
HARRELL
MANN
CARMIN &
PARKER PC

October 19, 2004

City of Bloomington
Planning Department
401 North Morton Street
Bloomington, IN 47404

William H. Andrews+*
Harold A. Harrell+
Robert D. Mann+
Michael L. Carmin
Angela F. Parker
Eric P. Slotegraaf**
Benjamin L. Nichoff

RE: Rezoning Petition
Our File No.: 2341-8

Kenneth L. Numm's petitions the City of Bloomington to rezone four real estate parcels located on West Third Street, Lots 4 through 5 of Lake View Park Subdivision to the City of Bloomington. The lots are on the south side of Third Street and adjacent to the east to the Landmark Development.

*Certified Civil Mediator
*Certified Family Mediator
**LL.M. - Taxation

The lots are presently zoned Limited Industrial/Institutional. The request is for rezoning to Arterial/Commercial.

400 West 7th Street
Suite 104
P.O. Box 2639
Bloomington
Indiana
47402-2639

The five lots, combined, are approximately 2.45 acres. A copy of the record deeds are provided with this petition. A survey of the lots dated September 2, 2004 is also enclosed.

812 332-4200
Telephone

The CA use is consistent with prevailing uses in the surrounding area. Properties north and south of Third Street are presently zoned CA or Planned Unit Development for which the permitted uses are consistent with CA zoning.

812 331-4511
Facsimile

After a review of this petition by the Planning Staff and after further consultation, petitioner will propose appropriate recordable commitments as a part of this petition.

Respectfully submitted,

<http://www.ahmcp.com>
Web Site
mlc@ahmcp.com
E-mail

Michael L. Carmin
Attorney for Petitioner

MLC/mjk
Enclosures
229870\2341-8

Petitioner's Statement
20-34-04 (6)

**COMMITMENT CONCERNING THE USE AND
DEVELOPMENT OF REAL ESTATE**

KENNETH L. NUNN (the "Owner") makes the following commitment to the City of Bloomington Planning Commission (the "Commission") regarding the use and development of the following described real estate (the "Real Estate"), located in Bloomington, Indiana:

- Section 1. Description of Real Estate.** See Exhibit A, attached ("Development Real Estate").
- Section 2. Case Number.** ZO-34-04
- Section 3. Statement of Commitment.**
- a. No buildings erected on the Development Real Estate shall have:
 - 1) metal exterior siding;
 - 2) on sides of the building visible from Third Street, more than 30% of the exterior siding in vinyl or smooth-face concrete;
 - 3) a roof with less than 4-in-12 pitch.
 - b. The Development Real Estate will have one principal access to Third Street, aligned with Westplex Avenue.
 - c. Development of the real estate shall employ "building forward" concepts limiting parking north of any structures on the real estate and between a structure and the Third Street right-of-way. At least 40% of the Third Street frontage shall be developed with buildings at the building set back line.

- d. The Third Street frontage is part of the entrance corridor enhancement to the City of Bloomington. Owner, at Owner's expense, will improve the Third Street frontage to enhance the entrance to the City of Bloomington by replacement and relocation of the sidewalk, by planting additional street trees, by dedication of green space and by foundation landscape plantings for all buildings constructed on the real estate. Any building constructed at the West 3rd Street right-of-way shall include a pedestrian entrance along West 3rd Street.
- e. Additional right-of-way for Third Street will be dedicated in conformance with the requirements of the Thoroughfare Plan prior to approval of any site plan for the Development Real Estate.
- f. Drainage easement, utility easement and conservation area shall be dedicated on the southern portion of the lots comprising the Development Real Estate. The existing sewer line and any drainage or utility easements will be plotted by a re-platting or by recording of a site plan for the Development Real Estate.
- g. Parking lots and interior drives will be located to permit connection to adjacent properties on the east side and on the west adjacent to the undeveloped real estate. Cross easements with the adjacent property shall be dedicated along main drives and connection points to ensure connectivity.

Section 4. Binding Effect.

- a. These commitments are a condition of approval of rezoning of the Development Real Estate from IL/IS to general commercial (CG). Failure to honor the commitments shall constitute a violation of the zoning ordinance and shall be subject to the penalties for a violation in addition to all other enforcement remedies.
- b. These commitments are binding upon the Owner, subsequent owners of the Development Real Estate, and each other person acquiring an interest in the Development Real Estate, unless modified or terminated.
- c. These commitments may be modified or terminated only by a decision of the Bloomington Plan Commission upon a public hearing held by the Commission wherein notice has been given as

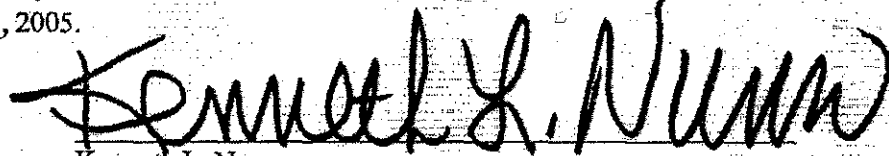
provided by the Commission's rules.

Section 5. Effective Date. The commitments contained herein shall be effective upon adoption of an ordinance by the City of Bloomington assigning general commercial zoning to the Real Estate identified in Case No. ZO-34-04.

Section 6. Recording. The undersigned hereby authorizes the Clerk of the City of Bloomington Common Council to record these commitments in the Office of the Recorder of Monroe County, Indiana at the owner's expense. A copy of the recorded commitments bearing the recording stamp of the Recorder of Monroe County, Indiana shall be submitted to the Planning Department within thirty (30) days of final approval of the rezoning of the Development Real Estate.

Section 7. Enforcement. These commitments may be enforced by the Commission or any adjacent property owner or other interested party, as defined by the Planning Commission rules and procedures.

IN WITNESS WHEREOF, Kenneth L. Nunn has caused this commitment to be executed as of the 17th day of January, 2005.



Kenneth L. Nunn
123 South College Avenue
Bloomington, IN 47404

DEED REFERENCES:

Instrument No. 607651
Recorded May 13, 1996

Instrument No. 416682
Recorded October 14, 1994

Instrument No. 611781
Recorded July 17, 1996

Exhibit A

A part of Lots 4 thru 8 in Lake View Park Addition, a subdivision of seminary lots 139, 140, 141, and 142, in the City of Bloomington, Indiana, as shown by the plat recorded in plat cabinet B, envelope 42, in the office of the Recorder of Monroe County, Indiana, being more particularly described as follows:

Commencing at a brass monument marking the Northwest corner of Section 5, Township 8 North, Range 1 West, Monroe County, Indiana; thence South 88 degrees 58 minutes 17 seconds East along the north line of said section for a distance of 220.60 feet; thence South 01 degrees 31 minutes 59 seconds West along the west line of Lot 4 in said Lake View Park addition for a distance of 44.82 feet to the south right-of-way of 3rd Street to a rebar with cap stamped SNA marking the Point of Beginning; thence South 88 degrees 57 minutes 34 seconds East along the south right-of-way of 3rd Street for a distance of 367.58 feet to a rebar with cap stamped SNA; thence South 01 degrees 30 minutes 45 seconds East along the east line of lot 8 in said Lake View Addition for a distance of 186.89 feet to a chiseled x in concrete; thence North 88 degrees 59 minutes 43 seconds West for a distance of 73.50 feet to a chiseled x in concrete; thence South 01 degrees 31 minutes 59 seconds East along the east line of lot 7 in said Lake View Addition for a distance of 70.00 feet to a mag nail; thence North 88 degrees 59 minutes 43 seconds West for a distance of 294.00 feet to a rebar with cap stamped Bledsoe Tapp; thence North 01 degrees 31 minutes 59 seconds West along the West line of lot 4 in said Lake View Addition for a distance of 257.21 feet to the Point of Beginning, containing 2.45 acre more or less.