

ORDINANCE NO. 2021-17

AN ORDINANCE AMENDING ZONING MAPS WITHIN THE ZONING ORDINANCE OF THE TOWN OF WHITESTOWN, INDIANA

Zoning Map Amendments
PC21-002-ZA

WHEREAS, the Petitioner, Christopher Brauer, filed his Zoning Amendment Application before the Whitestown Plan Commission seeking to rezone approximately 5.47 acres, more or less, in the Town of Whitestown, Indiana, **from the AG (Agriculture) Zoning Classification to the LB (Local Business) Zoning Classification**; and

WHEREAS, pursuant to Indiana Code § 36-7-4-608, the Whitestown Plan Commission conducted the required public hearing and determined favorable recommendation, by a 6-0 vote, on March 8, 2021; and

WHEREAS, the Whitestown Plan Commission certified favorable recommendation to the Whitestown Town Council on April 8, 2021; and

WHEREAS, pursuant to Indiana Code § 36-7-4-608, the Town Council of the Town of Whitestown, having considered the application and the recommendation of the Whitestown Plan Commission, now adopts the proposal and approves the requested rezoning amendment.

IT IS THEREFORE CONSIDERED, ORDAINED, AND ADOPTED as follows:

Section 1. That the Applicant and Owner is Christopher Brauer.

Section 2. That the Applicant seeks to have the property described in Exhibit 1-A, attached hereto and incorporated herein by reference (“Property”), which is currently located in the AG (Agriculture) Zoning Classification, rezoned to the LB (Local Business) Zoning Classification.

Section 3. In order to induce the Town Council and as a condition of granting the requested rezone of the Property, the Applicant has made certain written commitments attached hereto as Exhibit 1 and incorporated herein as a part of this Ordinance (“Commitments”). The rezone is subject to and contingent upon the Commitments. The Applicant shall further record this Ordinance and the Commitments in the chain of title for the Property.


Section 4. That the Town Council of Whitestown has paid reasonable regard to the comprehensive plan; current conditions and the character of current structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible development and growth.

Section 5. That the Town Council hereby adopts the amendment to the zoning map with respect to the Property, such that the Property is rezoned to the LB (Local Business) Zoning Classification subject to the Commitments.

Section 6. This Ordinance shall be in full force and effect from and after its passage and upon presentation of proof by Petitioner to the Town that this Ordinance and the Commitments have been recorded.

ALL OF WHICH IS ADOPTED this 14th day of April, 2021, by the Town Council of the Town of Whitestown, Indiana.

TOWN COUNCIL OF WHITESTOWN, INDIANA

DocuSigned by:


Clinton Bohm, President

ATTEST:

DocuSigned by:


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Matt Sumner, Town Clerk-Treasurer

Ordinance prepared by Brittany Garriott, Town Planner

4086625

Exhibit 1-A

Legal Description

Land situated in the County of Boone, State of Indiana

A part of the Southwest Quarter of Section 30, Township 18 North, Range 2 East, Worth Civil Township, Boone County, Indiana more particularly described as follows:

Beginning at the Southeast corner of the Southwest Quarter of said Section 30; thence South 89 degrees 12 minutes 51 seconds West (assumed bearing) 425.00 feet; thence North 00 degrees 04 minutes 39 seconds West 561.00 feet to the Southwest corner of the property owned by Chapman, Michael J. and Misty J. as recorded in Inst. No. 2013-002489, dated February 27, 2013 in the Office of the Recorder of Boone County, Indiana; thence North 89 degrees 12 minutes 51 seconds East 425.00 feet along the South line of said property to the East line of said Southwest Quarter; thence South 00 degrees 04 minutes 39 seconds East 561.00 feet along said East line to the Place of Beginning, containing 5.473 acres, more or less

Commonly known as: 4376 S. Main St.

Tax Parcel ID: 018-04280-05 State Parcel ID: 06-08-30-000-007.001-019

Exhibit 1

WHITESTOWN PLAN COMMISSION FILE PC21-002-ZA

VOLUNTARY COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL PROPERTY MADE IN CONNECTION WITH A PETITION FOR REZONING

Christopher N. (Nick) Brauer (hereinafter "**Brauer**") represents that he is the Current Owner of certain real estate located in Whitestown , Boone County, Indiana, which is described in Exhibit 1-A attached hereto ("**Real Estate**"), commonly known as 4736 S. Main St., Whitestown , Indiana, and as the Owner of the Real Estate, voluntarily makes the following **COMMITMENTS** concerning the rezoning, use and development of the Real Estate:

STATEMENT OF COMMITMENTS

1. Brauer voluntarily agrees and commits that the approval of File No. PC21-002-ZA requesting a Rezone of the real estate from the AG ALL to the LB - Local Business Zoning Classification is approved, conditioned upon the following:
 - a) Brauer agrees to and acknowledges the following Commitments:
 - 1) The landscaping , archi tecture , and location of the building shall generally comply with the architectural renderings and site plans attached hereto and marked as Exhibit 1-B.
 - 2) Notwithstanding those Permitted uses ; Permitted Conditional uses ; Special Exception uses ; or Special Exception Conditional uses as allowed in the LB - Local Business Zoning Dis tric t, the real estate will only be utilized for the following uses:
 - A) Medical Office (including Dental);
 - B) Medical and Dental Laborator ies;
 - C) Engineering and Architectural Service ;
 - D) Insurance Agent, Broker and Service ;
 - E) Dwelling - Single Family; and
 - F) Counselor-at-Law
 - 3) Other than the structures set out and shown on the attached Exhibit 1-8 , no other habitable structures or permanent buildings of any type shall be constructed on the property.

These **COMMITMENTS** contained herein shall be effective upon approval of the Whitestown Plan Commission, Application or File No. PC21-002-ZA, and ultimately adopted per a Rezoning Ordinance by the Legislative Body of the Town of Whitestown , and shall continue in effect until modified or terminated in conformance with the requirements herein.

These **COMMITMENTS** shall be binding on Brauer, and subsequent owners of the Real Estate, and any person or entity acquiring an interest therein (hereinafter collectively the "Owner").

Owner shall have an affirmative duty to inform any third parties with whom Owner negotiates for a possible sale, lease , assignment, mortgage, or transfer of the Real Estate of the existence of these Commitments. In the event any sale, lease, assignment, mortgage or transfer occurs, Owner shall ensure that a copy of these Commitments is incorporated into any such written agreement with the third party. In the event Owner fails to comply with the terms of this paragraph and the third party fails to perform these Commitments, the County of Boone shall be entitled to recover from Owner and from each third party identified above as Owner, jointly and/or severally, any and all damages which arise from this failure and shall be entitled to injunctive relief to terminate any non-compliance herewith.

These **COMMITMENTS** may be modified or terminated by decision of the Legislative Body for the Town of Whitestown , after first being submitted to a Public Hearing by the Whitestown Plan Commission, for which proper notice is given, including hearing for other land uses or zoning approvals involving the Real Estate or any portion thereof described in Exhibit 1-A.

These **COMMITMENTS** may be enforced jointly and/or severally by:

1. The Town of Whitestown; and
2. Whitestown Plan Commission.

In the event it becomes necessary to enforce these **COMMITMENTS** in a court of competent jurisdiction and Owner is found to be in violation of these **COMMITMENTS**, such Owner shall pay all reasonable costs and expenses to the above listed enforcing individuals, entities, and/or bodies seeking to enforce these **COMMITMENTS**, including reasonable attorney fees, expert witness fees, and court costs.

Owner agrees to indemnify the Whitestown Plan Commission and the Legislative Body for the Town of Whitestown and hold said entities , and their respective authorized representatives , harmless from any liability, expense (including reasonable attorney fees and court costs), costs or damages which result from Owner' s failure to perform Owner ' s obligations under the terms and conditions of these **COMMITMENTS**.

Brauer shall be responsible for recording these **COMMITMENTS** in the Office of the Recorder of Boone County, Indiana, and upon the final approval of an Ordinance rezoning the real estate in conformance hereto. Brauer shall provide the Planning Department of the Town of

Whitestown with copies of such recording as a condition precedent to commence the approved Use or issuance of a Building Permit and/or Certificate of Occupancy. These **COMMITMENTS** shall be considered a Covenant running with the real estate described in Exhibit 1-A.

The undersigned further represents and warrants that Brauer is the Current Owner of the Real Estate described in Exhibit 1-A and they have voluntarily entered into these **COMMITMENTS** and that these **COMMITMENTS** shall be binding upon Brauer or Owner as to all the particulars herein, and shall be considered a **COVENANT** running with the land described herein as the Real Estate, including any portion thereof.

(The rest of this page is intentionally left blank. Signature page to follow.)

IN WITNESS WHEREOF, Owner has executed these COMMITMENTS this ___ day of _____, 2021.

OWNER:

Christopher N. Brauer

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared Christopher N. Brauer, as Owner, of the real estate described above, who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this _ _ _ day of _____, 2021.

Signature

Printed, Notary Public

My Commission Expires:

County of Residence:

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. Michael J. Andreoli

**This instrument prepared by Michael J. Andreoli, Attorney at Law
1393 West Oak Street, Zionsville, Indiana 46077, (317) 873-6266.**

Exhibit 1-A

LEGAL DESCRIPTION

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Commonly Known as: 4736 S. Main St., Whitestown, IN 46075

Tax Parcel ID: 018-04820-05

State Parcel ID: 06-08-30-000-007.001-019

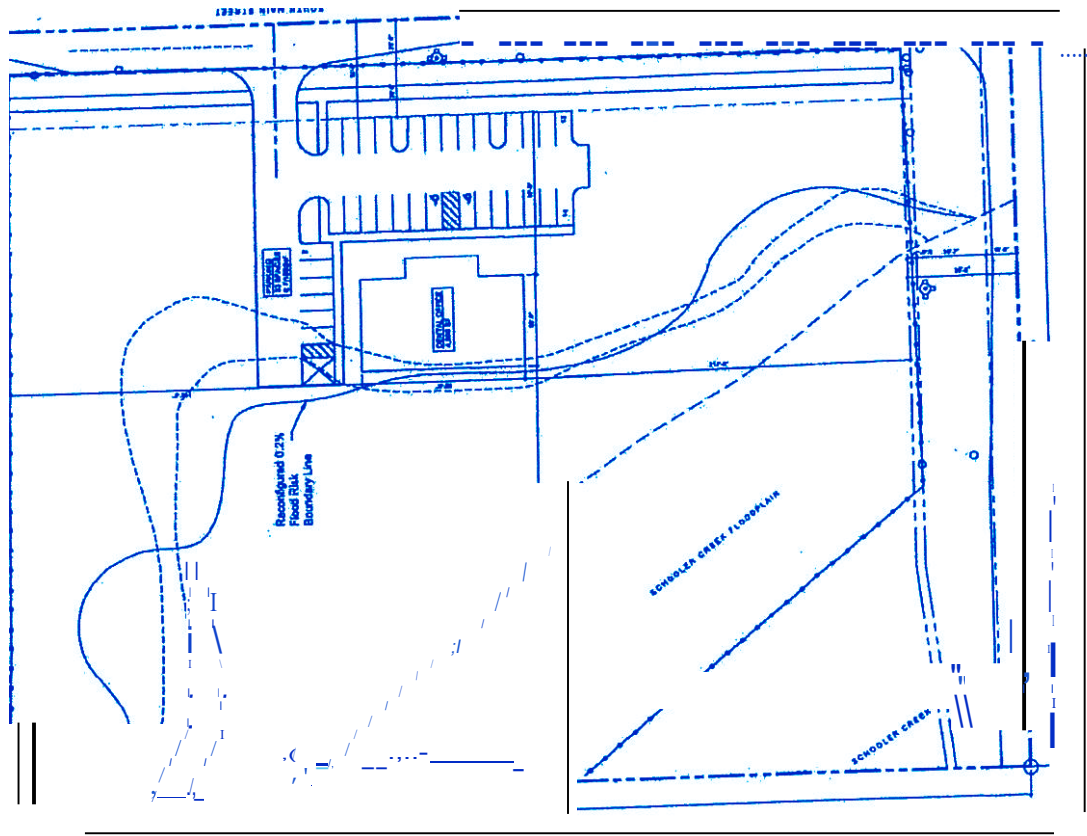
PROJECT STUDIO, LLC
 8715 Main College Avenue, Suite 215
 Charlotte, NC 28217

COMMITMENT: ENGINEER'S SEAL
 EXISTING UTILITIES: AS SHOWN
 DECISIONAL AND/OR: EXISTING

PROPOSED: EXISTING
 EXISTING UTILITIES

NOTE: ALL PLACEMENTS ARE EXISTING AND ARE TO BE MAINTAINED.

Proposed Site



EB