

SPECIAL ORDINANCE NO. 39, 2024

APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE

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Common Addresses of lots to be rezoned:

(A) 2121 Lafayette Ave., Terre Haute, Indiana 47804
Parcel No. 84-06-02-352-003.000-002

(B) 2145 Lafayette Ave., Terre Haute, Indiana 47804
Parcel No. 84-06-02-352-002.000-002

Rezoned From: (A) C-2Community Commerce District
(B) C-1 Neighborhood Commerce District

Rezoned To: C-3 Regional Commerce District

Proposed Use: Qdoba Restaurant

Name of Owners: M Three Holdings, LLC

Address of Owners: 5549 Hallie Rae Lane, Terre Haute, IN 47802

Phone Number of Owners: c/o Richard J. Shagley II
812-232-3388

Attorney Representing Owners: Richard J. Shagley II

Address of Attorney: Wright, Shagley & Lowery, P.C.
PO Box 9849, Terre Haute, IN 47807

For Information Contact: Owner Attorney

Council Sponsor: Cheryl Loudermilk

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COPY OF A SITE-PLAN MUST ACCOMPANY THIS APPLICATION

FILED

NOV 06 2024

**SPECIAL ORDINANCE FOR A REZONING
SPECIAL ORDINANCE NO. 39, 2024**

CITY CLERK

An Ordinance Amending Chapter 10, Article 2 of the Municipal Code designated as "Comprehensive Zoning Ordinance for Terre Haute Indiana."

SECTION I. BE IT ORDIANED BY THE COMMON COUNCIL of the City of Terre Haute, Vigo County, State of Indiana, that Chapter 10, Article 2 of the City Code of Terre Haute, designated as the "Comprehensive Zoning Ordinance for Terre Haute" and Division 4, Section 10.121 thereof, District Maps, be, and the same is hereby amended to include as follows:

A part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 12 North, Range 9 West of the Second Principal Meridian, Harrison Township, Vigo County, in the City of Terre Haute, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said quarter quarter (a 1" Iron Pipe, found); thence South 00 degrees 01 minutes 10 seconds West (assumed bearing), basis of all bearings is the East line of the southwest quarter of Section 2 being assumed a north-south line through existing monuments (stones) and the East line of said quarter quarter as established by Iron Pipes set by George Fisk survey of July 20, 1955, a distance of 217.8 feet to a 1" Iron Pin (previously set), the point of beginning of this description; thence continuing on the East line of said quarter quarter on a bearing of South 00 degrees 01 minute 10 seconds West a distance of 89.605 feet to a 1" Iron Pin (previously set); thence South 89 degrees 32 minutes 41 seconds West 273.41 feet to a P.K. Nail (previously set) in the centerline of Lafayette Avenue as presently laid out (by existing monuments at 25th Street and Lafayette Avenue and Ft. Harrison Road and Lafayette Avenue); thence along the centerline of Lafayette Avenue on a bearing of North 31 degrees 41 minutes 30 seconds East a distance of 106.53 feet to a P.K. Nail (previously set); thence North 89 Degrees 41 minutes 06 seconds East a distance of 217.47 feet to the point of beginning. Containing 0.5067 acres (22,073.21 square feet). Subject to a road right of way for Lafayette Avenue off the west side thereof.

ALSO

A part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 12 North, Range 9 West of the Second Principal Meridian, Harrison Township, Vigo County, in the City of Terre Haute, Indiana, more particularly described as follows:

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ALSO

Commencing at a point which is 127.8 feet South and 16 feet West of the Northeast corner of the Southwest Quarter (1/4) of the Southwest Quarter (1/4) of Section 2, Township 12 North, Range 9 West; thence running South 90 feet; thence running due West 200.8 feet to the centerline of the Lafayette Road of United States Highway #41; thence North 31 degrees and 45 minutes East along the centerline of said Highway 107 feet; thence due East 145.1 feet to the place of beginning.

Subject to all easements, restrictive covenants, agreements, restrictions, and all matters of record or which would be disclosed by an accurate inspection and an ALTA survey of the Real Estate.

Parcel Nos.: 84-06-02-352-003.000-002
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Commonly known as: 2121 & 2145 Lafayette Ave., Terre Haute, IN 47804-

Be and the same is hereby established as a C-3 Regional Commerce District, together with all rights and privileges that may insure to said real estate and the owners thereof by virtue of the law in such cases provided, subject to all limitations and restrictions imposed thereon by deed or otherwise."

SECTION II. WHEREAS, an emergency exists for the immediate taking effect of this Ordinance, the same shall be in full force and effect from and after its passage by the

Common Council of Terre Haute, and its approval by the Mayor and publication as required by law.

Presented by Council Member, Cheryl Loudermilk
Cheryl Loudermilk, Councilperson

Passed in open Council this ____ day of _____, 2024.

Tammy Boland, President

ATTEST:

Michelle Edwards, City Clerk

Presented by me, to the Mayor of the City of Terre Haute, this ____ day of _____, 2024.

Michelle Edwards, City Clerk

Approved by me, the Mayor of the City of Terre Haute, this ____ day of _____, 2024.

Brandon Sakbun, Mayor

ATTEST:

Michelle Edwards, City Clerk

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.

Richard J. Shagley II
Richard J. Shagley II

This instrument prepared by Richard J. Shagley II, Attorney-at-Law, WRIGHT, SHAGLEY & LOWERY, P.C., 500 Ohio Street, P.O. Box 9849, Terre Haute, Indiana 47807

PETITION TO REZONE REAL PROPERTY

TO: THE PRESIDENT AND MEMBERS OF THE COMMON COUNCIL OF THE CITY OF TERRE HAUTE, INDIANA:

And THE PRESIDENT AND MEMBERS OF THE AREA PLAN COMMISSION FOR VIGO COUNTY, INDIANA:

LADIES AND GENTLEMEN:

The undersigned, M Three Holdings, LLC, respectfully submits this Petition to rezone the following described real estate in the City of Terre Haute, County of Vigo, Indiana, to wit:

A part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 12 North, Range 9 West of the Second Principal Meridian, Harrison Township, Vigo County, in the City of Terre Haute, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said quarter quarter (a 1" Iron Pipe, found); thence South 00 degrees 01 minutes 10 seconds West (assumed bearing), basis of all bearings is the East line of the southwest quarter of Section 2 being assumed a north-south line through existing monuments (stones) and the East line of said quarter quarter as established by Iron Pipes set by George Fisk survey of July 20, 1955, a distance of 217.8 feet to a 1" Iron Pin (previously set), the point of beginning of this description; thence continuing on the East line of said quarter quarter on a bearing of South 00 degrees 01 minute 10 seconds West a distance of 89.605 feet to a 1" Iron Pin (previously set); thence South 89 degrees 32 minutes 41 seconds West 273.41 feet to a P.K. Nail (previously set) in the centerline of Lafayette Avenue as presently laid out (by existing monuments at 25th Street and Lafayette Avenue and Ft. Harrison Road and Lafayette Avenue); thence along the centerline of Lafayette Avenue on a bearing of North 31 degrees 41 minutes 30 seconds East a distance of 106.53 feet to a P.K. Nail (previously set); thence North 89 Degrees 41 minutes 06 seconds East a distance of 217.47 feet to the point of beginning. Containing 0.5067 acres (22,073.21 square feet). Subject to a road right of way for Lafayette Avenue off the west side thereof.

ALSO

A part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 12 North, Range 9 West of the Second Principal Meridian, Harrison Township, Vigo County, in the City of Terre Haute, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said quarter quarter (a 1" Iron Pipe, found), thence South 00 degrees 01 minutes 10 seconds West (assumed bearing), basis of all bearings is the East line of the southwest quarter of Section 2 being assumed a north-south line through existing monuments (stones) and the East line of said quarter quarter as established by Iron Pipes set by George Fisk survey of July 20, 1955, a distance of 127.80 feet to a 1" Iron Pin (previously set), the point of beginning of this description, thence continuing on the East line of said quarter quarter on a bearing of South 00 degrees 01 minute 10 seconds West a distance of 90.00 feet to a 1" Iron Pin (previously set); thence South 89 degrees 42 minutes 06 seconds West a distance of 16.00 feet; thence North 00 degrees 01 Minute 09.45 seconds East a distance of 90.07 feet to a 1" Iron Pin (previously set); thence North 89 degrees 58 minutes 08 seconds East a distance of 16.00 feet to the point of beginning. Containing 0.0331 acres (1440.58 square feet).

ALSO

Commencing at a point which is 127.8 feet South and 16 feet West of the Northeast corner of the Southwest Quarter (1/4) of the Southwest Quarter (1/4) of Section 2, Township 12 North, Range 9 West; thence running South 90 feet; thence running due West 200.8 feet to the centerline of the Lafayette Road of United States Highway #41; thence North 31 degrees and 45 minutes East along the centerline of said Highway 107 feet; thence due East 145.1 feet to the place of beginning.

Subject to all easements, restrictive covenants, agreements, restrictions, and all matters of record or which would be disclosed by an accurate inspection and an ALTA survey of the Real Estate.

Parcel Nos.: 84-06-02-352-003.000-002
84-06-02-352-002.000-002

Commonly known as: 2121 & 2145 Lafayette Ave., Terre Haute, IN 47804

Your Petitioner is informed and believes that in accordance with Chapter 10, Article 2 of the Municipal Code designated as "Comprehensive Zoning Ordinance for Terre Haute, Indiana," the above-described real estate is now zoned as (A) C-2 Community Commerce District and (B) C-1 Neighborhood Commerce District.

Your Petitioner intends to take the existing property and intends to build a new Qdoba restaurant. Your Petitioner would request that the real estate described herein shall be zoned as a C-3 Regional Commerce District.

Your Petitioner would allege that the C-3 Regional Commerce District would not alter the general characteristics of this neighborhood since there are other restaurants in the area.

Your Petitioner would respectfully show the proposed change would not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood.

WHEREFORE, your Petitioner respectfully requests that the Area Plan Commission for Vigo County and the Common Council of the City of Terre Haute, Indiana, favorably consider the passage of a Special Ordinance amending the Comprehensive Zoning Ordinance of the city of Terre Haute, Indiana, being Chapter 10, Article 2 of the Municipal Code designated as "Comprehensive Zoning Ordinance for Terre Haute, Indiana," and declaring the above-described real estate to be part of the C-3 Regional Commerce District of the City of Terre Haute, Indiana, and entitled to the rights and benefits that may accrue to the real estate and the owner thereof by virtue of the new designation subject to all limitations imposed by deed or otherwise.

IN WITNESS WHEREOF, this petition has been duly executed this 1st day of November, 2024.

PETITIONER:



Trey Miller, Member of M Three Holdings, LLC

This instrument prepared by Richard J. Shagley II, Attorney-at-Law, WRIGHT, SHAGLEY & LOWERY, P.C., 500 Ohio Street, P.O. Box 9849, Terre Haute, Indiana 47807.

SITE PLAN
SPECIAL ORDINANCE NO. 39, 2024



(A) 2121 Lafayette Ave., Terre Haute, Indiana 47804
Parcel No. 84-06-02-352-003.000-002

(B) 2145 Lafayette Ave., Terre Haute, Indiana 47804
Parcel No. 84-06-02-352-002.000-002

(A) C-2 Community Commerce District and
(B) C-1 Neighborhood Commerce District
to
C-3 Regional Commerce District

Proposed Use: Qdoba Restaurant

STATE OF INDIANA) SS:
COUNTY OF VIGO)

AFFIDAVIT

Comes now Trey Miller, member of M Three Holdings, LLC, being duly sworn upon his oath, deposes and says:

1. That M Three Holdings, LLC, is the owner of record of the following described real estate located in the City of Terre Haute, County of Vigo, State of Indiana, to-wit:

A part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 12 North, Range 9 West of the Second Principal Meridian, Harrison Township, Vigo County, in the City of Terre Haute, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said quarter quarter (a 1" Iron Pipe, found); thence South 00 degrees 01 minutes 10 seconds West (assumed bearing), basis of all bearings is the East line of the southwest quarter of Section 2 being assumed a north-south line through existing monuments (stones) and the East line of said quarter quarter as established by Iron Pipes set by George Fisk survey of July 20, 1955, a distance of 217.8 feet to a 1" Iron Pin (previously set), the point of beginning of this description; thence continuing on the East line of said quarter quarter on a bearing of South 00 degrees 01 minute 10 seconds West a distance of 89.605 feet to a 1" Iron Pin (previously set); thence South 89 degrees 32 minutes 41 seconds West 273.41 feet to a P.K. Nail (previously set) in the centerline of Lafayette Avenue as presently laid out (by existing monuments at 25th Street and Lafayette Avenue and Ft. Harrison Road and Lafayette Avenue); thence along the centerline of Lafayette Avenue on a bearing of North 31 degrees 41 minutes 30 seconds East a distance of 106.53 feet to a P.K. Nail (previously set); thence North 89 Degrees 41 minutes 06 seconds East a distance of 217.47 feet to the point of beginning. Containing 0.5067 acres (22,073.21 square feet). Subject to a road right of way for Lafayette Avenue off the west side thereof.

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ALSO

Commencing at a point which is 127.8 feet South and 16 feet West of the Northeast corner of the Southwest Quarter (1/4) of the Southwest Quarter (1/4) of Section 2, Township 12 North, Range 9 West; thence running South 90 feet; thence running due West 200.8 feet to the centerline of the Lafayette Road of United States Highway #41; thence North 31 degrees and 45 minutes East along the centerline of said Highway 107 feet; thence due East 145.1 feet to the place of beginning.

Subject to all easements, restrictive covenants, agreements, restrictions, and all matters of record or which would be disclosed by an accurate inspection and an ALTA survey of the Real Estate.

Parcel Nos.: 84-06-02-352-003.000-002
84-06-02-352-002.000-002

Commonly known as: 2121 & 2145 Lafayette Ave., Terre Haute, IN 47804-

2. That a copy of the Deed, recorded in the records of the Recorder's Office of Vigo County, Indiana, is attached hereto and made a part hereof and marked as Exhibit A.

3. That Affiant makes this Affidavit for the sole purpose of affirming that M Three Holdings, LLC, is the owner of record of the above-described real estate, for which a proposed change to the zoning map of the City of Terre Haute, Indiana, has been filed and to induce the Common Council of the City of Terre Haute, Indiana, to accept the

Petition to Rezone Real Property as filed by Trey Miller, member of M Three Holdings, LLC.

4. Further, Affiant saith not.

Dated at Terre Haute, Indiana this 1st day of November, 2024.

Trey Miller
Trey Miller, Member of M Three Holdings LLC

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for said County and State, this 1st day of November, 2024.

Julie R. Baysinger
Julie R. Baysinger, Notary Public



My Commission expires: 9-24-2028

My County of Residence: Vermillion

This instrument prepared by Richard J. Shagley II, Attorney at Law, WRIGHT, SHAGLEY & LOWERY, P.C., 500 Ohio Street, P.O. Box 9849, Terre Haute, Indiana 47807.



ENTERED FOR TAXATION
Subject to final acceptance for Transfer

AUG 23, 2024 MM

VIGO COUNTY AUDITOR

LIMITED LIABILITY COMPANY WARRANTY DEED

THIS INDENTURE WITNESSETH that **JFC Holdings II, LLC**, a limited liability company, organized and existing under the laws of the State of Indiana (hereinafter referred to as Grantor), for and in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, hereby CONVEYS, GRANTS and WARRANTS to **M Three Holdings, LLC**, (hereinafter referred to as Grantee), of the State of Indiana, the following described real estate in Vigo County in the State of Indiana, to-wit:

A part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 12 North, Range 9 West of the Second Principal Meridian, Harrison Township, Vigo County, in the City of Terre Haute, Indiana, more particularly described as follows:

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Subject to all easements, restrictive covenants, agreements, restrictions, and all matters of record or which would be disclosed by an accurate inspection and an ALTA survey of the Real Estate.

Parcel Nos.: 84-06-02-352-003.000-002
84-06-02-352-002.000-002

Commonly known as: 2121 & 2145 Lafayette Ave., Terre Haute, IN 47804-2917

Taxes shall be prorated to the date of deed.

Subject to any and all covenants, conditions, restrictions, ordinances, by-laws, easements, leases and other matters of record affecting title to the subject real estate, as well as rights of way for drainage tiles, ditches, feeders and laterals, if any.

As a further consideration of the payment of the above sum, the person(s) executing this deed on behalf of Grantor represent and certify, for the purpose of inducing Grantee to accept this Warranty Deed, that they have been fully empowered by the Articles of Organization of Grantor and proper resolution of Grantor to execute and deliver this deed; that Grantor has full capacity to convey the real estate conveyed by this instrument and that all necessary action for the making of such conveyance has been taken; Grantor further states under oath that no Indiana gross income tax is due or payable with respect to the transfer of the above-described real estate.

Grantor states that the above-described real estate is not "property" as defined by I.C. 13-11-2-174 and that the above-described real estate does not contain facilities that are subject to reporting under Section 312 of the federal Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11022) and is not the site of underground storage tanks for which notification is required under 42 U.S.C. 8991a or L.C. 13-23-1-2(c)(8)(A) and is not listed on the Comprehensive Environmental Response System (CERLIS) in accordance with Section 116 of CERCLA (42 U.S.C. 9616), and that, consequently, no disclosure document under Indiana Code 13-25-3-1 et seq. (Indiana Responsible Transfer Law) is required for this transaction.

This conveyance is being made pursuant to Section IC 23-18-9-3 of the Indiana Code as part of the process of winding up the affairs of JFC Holdings, II, LLC, an Indiana Limited Liability Company, which has been administratively dissolved.

DATED this 22 day of August, 2024.

IN WITNESS WHEREOF, James Cunningham, the authorized Member of JFC Holdings II, LLC, has caused this deed to be executed in its name on this 22 day of August, 2024.

JFC Holdings II, LLC

By: John Cunningham member
John Cunningham, Member

STATE OF Indiana)
) SS:
COUNTY OF Vigo)

Before me, the undersigned, a Notary Public in and for said County and State, this 22 day of August, 2024, personally appeared James Cunningham, the authorized Member of JFC Holdings II, LLC, and acknowledged and affirmed the execution of the foregoing deed.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:
5-11-2029



Cari Hunt
Notary Public
Printed: Cari Hunt
Residing in Vigo County

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.

Cari Hunt

Mail Tax Statements To Grantee at:

Mail Deed To: Integrity Title Services, 1532 Wabash Ave., Terre Haute, IN 47807.

This instrument was prepared by: John Gurchiek of GURCHIEK LAW, INC., P.O. Box 6327, Fishers, IN 46038, at the specific request of the parties of their authorized representatives based solely on information supplied by one or more of the parties to this conveyance. The drafter assumes no liability for any errors, inaccuracy, or omissions in this instrument resulting from the information provided and makes no representation regarding the status or quality of the title hereby conveyed by Grantor's execution and Grantee's acceptance of this instrument.
CMT: 24 06102