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From: Jeffrey A. Lewellyn <JALewellyn@wilkinsonlaw.com>
Sent: Tuesday, January 4, 2022 12:15 PM
To: Azar, George; DeBaun,Curtis; Boland,Tammy; Auler,Amy; Elliott,Earl; Loudermilk,Cheryl;
Nation,Todd; Garrison,Neil; Crossen,Martha
Cc: Edwards,Michelle
Subject: *Ext!* S.O. 42
Attachments: Ltr - Councilpersons - John Dice 010422.pdf

****External Email - Think Before You Click****

- Helpdesk

Councilpersons and City Clerk:

Attached is correspondence for your consideration relating to Special Ordinance 42.

I would like to discuss with you any questions or concerns that you may have. Otherwise, I respectfully request your vote to deny the requested rezoning.

Thank you for your time and consideration.

Best regards,

Jeff

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January 4, 2022

Common Council of the City of Terre Haute, Indiana
VIA Email

Councilpersons:

I am contacting you in follow-up regarding Special Ordinance 42, proposed rezoning of two lots (Lot 1 and Lot 2) at the southeast corner of Washington and 6th Street, as proposed by Next Step Foundation, Inc. (Next Step). As you know, I represent John Dice the property owner located directly to the south of the subject Lot 2, fronting on 6th Street.

As I indicated in the last Council meeting, the procedure for rezoning this property as a Planned Development involves your initial determination that a hardship exists as to each individual lot at issue. (Attached is a copy of the applicable City Zoning Ordinance sections 10-110 through 10-112.) Pursuant to Indiana law, that hardship must be a condition that is created by the land itself given its size, shape, location or other unique characteristic that prevents the land from being used in the manner that it is currently zoned under the existing comprehensive master zoning plan and map.

Admittedly, a unique characteristic of subject Lot 1 may be the 1800's church building structure that exists on that lot, but Lot 2 is a separate lot which is an unimproved vacant lot with no unique characteristics or hardship in condition that prevents it from being used in its current zoning classification. As the City Code provides: "Before a Planned Development can be considered" an initial determination of a hardship must occur. The Council cannot proceed to act to rezone the land until that hardship is proved by the Petitioner. In this instance, the facts do not support such a finding. Although Lot 1 lot has never been properly rezoned for the current use that Next Step is conducting on that lot, that lot has been used by Next Step for almost 7 years (without enforcement from the City authority), but also without any needed development of Lot 2. Lot 2 stands on its own. Therefore, a rezoning of Lot 2 as a Planned Development should clearly be denied.

As for Lot 1, although it has been used in violation of the City Code for many years, Next Step now proposes and, in fact, has already begun using the property, again in violation of the Code, for expanded commercial purposes by opening and operating a new café, Recovery Café, open to the general public. The continued use in violation of the Code must be prevented.

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In addition to simply requesting a rezoning of the property, the Petitioner seeks to receive variances from set back requirements of the Code. The Petitioner stated at the last Council meeting that the set back would only need to apply to the church building, however, the Petition does not limit the request to Lot 1 and the church building exists as a “grandfathered” condition. No variance from set back is necessary.

With regard to a parking variance, the Petitioner requests your approval such that there would be no off-street parking requirement. As Petitioner points out, the existing historical church building is currently used by Next Step for group rooms and training rooms, with a kitchen area, and office space, which obviously brings with that operation a significant number of personnel and required use of the limited on-street parking. Adding the newly opened Recovery Café, which is open to the public, adds additional traffic for customer use and vendor servicing. All with no added parking spaces. That is all without considering adding on Lot 2 the proposed dormitory/apartment type structure for 20 women, their infants, additional staff, visitors of family and friends. All such traffic to be handled with no off-street parking. Clearly, that is not a workable situation. This is just another reason to deny the rezoning request.

Also, as others in objection to the petition to rezone have indicated, the proposed use is clearly an adverse change to the general characteristics of the neighborhood. The proposed new construction in the historic residential district is intended as a 20 unit dormitory type facility for the expansion of a commercial business. Anyone would be hard-pressed to argue it is a consistent use within this residential neighborhood. This is not a development for the betterment or improvement of the neighborhood, but rather it is for the business expansion and growth of Next Step. That is not a reason to support a legal rezoning of the property.

This is a historic RESIDENTIAL neighborhood – commercial use will certainly have an adverse effect. How could it not adversely affect John Dice’s neighboring home property with a commercial building within feet of his family residence?

Lastly, I think it should be recognized that Next Step has grown the services that offers by way of using nine other residential home structures within this neighborhood in a multi-family/group home type of manner. Notably, they have done so by using the existing historic structures, not by new construction. With that fact in mind, it can hardly be said that the neighborhood is simply against Next Step, the services it offers or the persons it serves. I believe that most everyone involved in this process recognizes the positive value to the community

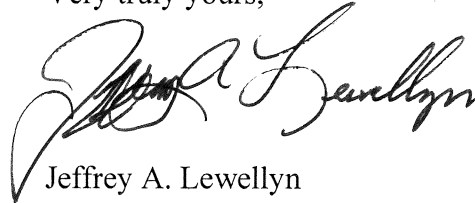
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that Next Step provides and that they are a good corporate citizen, but that is not enough to arbitrarily change land zoning classification. The home owners within this neighborhood should be able to rely on the existing comprehensive zoning plan and City Code.

I would be glad to speak with any of you to discuss any questions or concerns that you may have on this matter. You may contact my office as shown on this letterhead or call my cell phone at 812-841-5482. Otherwise, I respectfully request your vote to deny the requested rezoning.

Thank you for your time and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey A. Lewellyn". The signature is fluid and cursive, with a large initial "J" and "L".

Jeffrey A. Lewellyn

Division III. Planned Development.

Sec. 10-110 General - Floating Zones.

Planned Developments are uses that may be permitted, under certain circumstances, that are not a permitted use in the zoned district where said Planned Development is proposed. A Planned Development is a floating zone.

Sec. 10-111 Planned Developments.

Planned Developments shall follow the procedure outlined in Sec. 10-263.

Sec. 10-112 Criteria.

a. Before a Planned Development can be considered, the petitioner must show proof of one of the following unique circumstances. That the petitioner has a:

- (1) Hardship due to the physical characteristics of the land.

Example - Peculiarities of the sizes, shape, or grade of the parcel in question.

- (2) Hardship due to the improvements on the land.

Example - Commercial structure in a residential neighborhood that is not suitable for residential use.

- (3) Hardship due to adjacent, scattered incompatible uses.

Example - Scattered commercial uses in a residential neighborhood.

- (4) Hardship due to the general deterioration of the neighborhood.

Example - Neighborhoods that are blighted as determined by the Department of Redevelopment.

- (5) Parcel located near district boundary lines.

Example - Parcel located on a major thoroughfare is presently zoned residential while other parcels in the area are zoned commercial.