

Neice, Jessica

MAR 12 2024

**From:** Nation, Todd  
**Sent:** Monday, March 11, 2024 4:29 PM  
**To:** Thompson, Amanda  
**Cc:** Azar, George; Hinton, Kandace; DeBaun, Curtis; Edwards, Michelle; Mike Slagle; Boland, Tammy; Sakbun, Brandon; Wright, Michael; Chalos, James; Loudermilk, Cheryl; Dinkel, Anthony  
**Subject:** EXTERNAL -Re: EXTERNAL -Surface parking in C9  
**Attachments:** GO1.2020.pdf; ATT00001.htm

CITY CLERK

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Sorry I didn't attach the proposed General Ordinance 1, 2020, which prompted the two legal opinions. It was ultimately withdrawn, so nobody relied upon it to make any business decisions. I have attached it to this email.

You are right about Kroger et.al. having expertise in municipal law, Amanda. They were engaged by the CIB to shepherd the Convention Center project through completion, and the attached General Ordinance threatened to slow down that plan. Gerald McGlone has practiced law in Terre Haute for decades. Here is how he summarized his opinion for the fifty-plus citizens who gathered at the Vigo County Public Library to talk about parking plans for the Hilton Garden Inn four years ago:

"The Board of Zoning Appeals can grant variances from Development Standards, not a Use. Our zoning code mentions parking as a Use, not a Development Standard. When the BZA acts, it can be legally challenged."

That's what I asked Mike and Michael to weigh in on. Mike Slagle replied that what happened (nothing, since the GO was withdrawn), is legal. I hope to hear from Michael Wright at this evening's meeting. In my mind, whether the BZA can act on a variance to allow surface parking or not in C9 is still an open question.

My position — that the ground floor frontage of this development along Wabash Avenue should be primarily commercial space — is informed by over three decades of my personal participation in downtown redevelopment as a shopkeeper, property owner, small-time developer, charter member and past president of our Main Street organization, and City Council representative. I feel very confident that what I am advocating is both a best practice for 21st century downtowns and what the citizens we represent expect.

If this development wasn't happening with an unprecedented sum of public funds driving it, I wouldn't push so hard. Given the deal that is before us though, I believe the project should feature ground floor commercial space along its Wabash Avenue frontage — especially since our code says it should.

See you soon,

Todd

FILED

3-4-2020

CITY CLERK

**GENERAL ORDINANCE NO. 1, 2020  
AS AMENDED**

AN ORDINANCE MODIFYING CHAPTER 10, ARTICLE 2, SECTION 10-207 PROHIBITING VARIANCE REQUESTS FOR SURFACE PARKING AS A PRIMARY USE ON A LOT LOCATED ALONG WABASH AVENUE OR 7<sup>TH</sup> STREET IN THE C-9 PEDESTRIAN CORE AREA.

WHEREAS, the Common Council, from time to time, seeks to clarify conflicting portions of the *Terre Haute City Code*;

WHEREAS, the Common Council desires to restrict applications for variances that would allow surface parking as a primary use on a lot located along Wabash Avenue or 7<sup>th</sup> Street in the C-9 Pedestrian Core Area; and

WHEREAS, the Common Council believes said restriction is in concert with the spirit of the C-9 Pedestrian Core Area.

IT IS HEREBY ORDAINED by the Common Council of the City of Terre Haute that the *Terre Haute City Code* shall be modified as follows:

**SECTION 1.** *Terre Haute City Code* shall be modified with the insertion of the underlined text or removed as indicated by the stricken text as follows:

**ARTICLE 2. COMPREHENSIVE ZONING ORDINANCE**

**Division X. Commercial Districts**

**Sec. 10-207 Uses, Permitted.**

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hh. **Off-Street Parking Provisions.**

(1) There shall be no parking required for individual establishments in the C-9 Area, except as noted hereinafter. This will encourage the establishment of new enterprises which would find it especially difficult to provide parking on relatively small building lots.

(2) Any off-street parking or loading area shall be located behind the building that it serves. Under no circumstances shall surface parking be a primary use on a lot located along Wabash Avenue or 7th Street.

(3) All surface parking lots require a five foot (5') minimum width landscaping area between the vehicular use area and any street right-of-way, adorned with visual screening (other than berms) between thirty inches (30") to forty-two inches (42") height, plus one (1) tree per twenty (25) linear feet. Landscape plans shall be approved by the City Landscape Architect. Automobile access to any parking lot from the front property right-of-way is prohibited unless an alley entry or side yard entry/exit is not practical, as determined by the City Engineer.

ii. Variance From C-9 Requirements.

Applications for variances are permitted from any provision of Sec. 10-207 dd. through hh. except for the provisions of Subsection dd. (Dimensional Requirements), but even those Dimensional Requirements may be varied for certain new construction as set forth in Sec. 10-261~~7~~, and Subsection hh(2) as it relates to surface parking as a primary use on a lot located along Wabash Avenue or 7<sup>th</sup> Street.

**SECTION 2.** The illegality or invalidity, for any reason, of any of the sections of this ordinance, or parts thereof, shall invalidate only such section or sections as are so determined to be illegal or invalid, any such invalidity shall have no effect on the remaining sections of this ordinance.

**SECTION 3.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 4.** This ordinance shall be in full force and effect from and after the date of its passage by the Common Council of Terre Haute, Indiana and approval of the Mayor and upon publication as required by law.

Introduced by: \_\_\_\_\_ Todd Nation, Councilperson

Passed in open Council this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_ George Azar, President

ATTEST: \_\_\_\_\_ Michelle L. Edwards, City Clerk

Presented by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_ Michelle L. Edwards, City Clerk

Approved by me, the Mayor, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_ Duke A. Bennett, Mayor

ATTEST: \_\_\_\_\_ Michelle L. Edwards, City Clerk

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On Mar 11, 2024, at 1:59 PM, Thompson,Amanda <[Amanda.Thompson@TerreHaute.IN.Gov](mailto:Amanda.Thompson@TerreHaute.IN.Gov)> wrote:

Hi, all.

Unfortunately I managed to get sick while at Arch Madness and have a cough that won't stop. It will be Nyquil and bed for me as soon as I'm done with Court. But even though I won't be there tonight, I would like to say a few things.

First, I can't really form much of an opinion based on what's before me. I haven't seen the proposed resolution from 2020 for which Kroger gave their opinion. Also, it's not made clear what was asked of Kroger beyond determining the legality of the proposed resolution. I'm not seeing that they were asked to make a determination on "use", which is most of what McGlone discusses in his opinion. Short version- I'd like to know more of the background on this.

Second, I don't know anything about either Kroger or McGlone. I don't do this type of law and I think it's important that an attorney that works in this field give an opinion we rely on. Trust me, you wouldn't want to ask my opinion on contract law or business law. I don't know what type of law McGlone practices? But I do see that municipal practice is listed as an area of expertise for Kroger- is that why they were asked to give the opinion? Typically when I have two dueling opinions I'll ask for a third. Have Mike and Mike been asked their opinion? If so, what is their position?

Third, the law changes rapidly. The case that was relied upon in forming the opinion is a 1981 case. I've attached the full Court opinion to this email. Given the age of the case, I Shepardized it to make sure it is still good law- it is. So I think the Kroger legal opinion can still be relied upon.

Fourth, have stakeholders relied upon this opinion? If representations were made to the developers that we would be accepting the Kroger opinion and they relied upon those representations in making their investment, we could be (and I can assure you, will be) sued if we now try to back track that. Any money they are out the City could be required to pay back- in addition to any attorneys fees.

Finally, we are so close to breaking ground. The developer made it clear, if the Hotel is not being built in its current conception they will walk away from the project. That would set us back at least four years. Is this the hill we want to die on? I have seen this type of parking in other cities and I honestly don't understand the aversion to it. In fact, I think it could be an opportunity to add some green space and art to the downtown. Imagine some benches and large planters out front- and create an Instagrammable mural.

Anyway, those are my thoughts and that's what I would have said was if I there tonight.

Thanks!

Amanda

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From: Todd Nation <[booknation@gmail.com](mailto:booknation@gmail.com)>

Sent: Sunday, March 10, 2024 4:40:07 PM

To: Azar, George; Hinton,Kandace; DeBaun,Curtis; Edwards,Michelle; Mike Slagle;

Boland,Tammy; Sakbun,Brandon; Thompson,Amanda; Wright,Michael

Cc: Chalos,James; Loudermilk,Cheryl; Dinkel,Anthony

Subject: EXTERNAL -Surface parking in C9

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Hello again, fellow council members.

In preparation for our discussion of the proposed \$3,000,000 ARPA allocation toward Downtown Infrastructure in support of the proposed hotel project at 7th and Wabash, I would like you to review the attached documents. They date from early 2020, when the CIB purchased the Vigo County School Corporation's property at the northwest corner of 7th and Wabash to provide parking for the Hilton Garden Inn.

At that time, HGI was providing their 35-spot surface parking lot east of the hotel for construction of the Convention Center, and plans to build a dedicated parking garage for HGI at the southeast corner of 7th and Cherry had been deemed too costly. The CIB, owners of the Convention Center, then moved to purchase the VCSC property at 686 Wabash to replace the parking spaces lost to Convention Center construction. This sparked a conversation about surface parking lots on Wabash Avenue in the C9 zoning district, which you will see is prohibited by both the spirit and letter of our C9 zoning rules — at least, that's what we thought we had done when we wrote the C9 code.

In preparation for tomorrow's discussion, you will probably want to review the C8 and C9 zoning standards in our City Code (C8 rules inform C9 rules). The preamble for C8 begins in Section 10-134q (which is on page 780 of our 908 page City Code). C9's preamble begins in section 10-140, on page 786.

As you probably know, the whole code is at [www.terrehaute.in.gov](http://www.terrehaute.in.gov)<<http://www.terrehaute.in.gov>>

I understand that this is all confusing. To me, the bottom line is that developers of the proposed hotel(s) on the VCSC property should build commercial space along the ground floor frontage of the Wabash Avenue as part of this project — not surface parking, screened or otherwise.

Please review these materials and let's discuss your thoughts tomorrow. As you may know, the CIB has always been represented by former state legislator Brian Bosma, of Kroger et. al. in Indianapolis. The other opinion was written by local attorney Gerald McGlone, who was helping me back then.

Enjoy!

Todd  
mobile 812-870-4986

end.

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The City of Terre Haute 17 Harding Avenue Terre Haute, IN 47807

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