

SPECIAL ORDINANCE NO. 14, 2014

APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE

=====
Common Address of lots to be rezoned:

3404 S. 7th Street, Terre Haute, IN 47802

Rezone From: R-1 Single Family Residence District
Rezone To: C-2 Community Commerce District
Proposed Use: Physical Therapy Office
Name of Owner: Fred H. Simmons Jr. & Marilyn R. Simmons
Address of Owner: 3404 S. 7th Street
Terre Haute, IN 47802
Phone Number of Owner: (812) 232-1138
Attorney Representing Owner: Richard J. Shagley
Address of Attorney: Wright, Shagley & Lowery, P.C.
PO Box 9849, Terre Haute, IN 47808
For Information Contact: Owner Attorney
Council Sponsor: Neil Garrison

=====
COPY OF A SITE-PLAN MUST ACCOMPANY THIS APPLICATION

AMENDED SPECIAL ORDINANCE NO. 14, 2014

CITY CLERK

An Ordinance Amending Chapter 10, of the Terre Haute City Code, Zoning and Subdivision Regulations, as adopted by General Ordinance No. 10, 1999, as Amended, entitled "An Ordinance Adopting And Enacting A Code Of Ordinances For The City Of Terre Haute, Indiana; Establishing The Same; Providing For the Repeal Of Certain Ordinances Not Included Therein, Except As Herein Provided; Providing For The Manner Of Amending Such code Of Ordinances; Providing A Penalty For Violations Thereof; Providing When This Ordinance Shall Become Effective And Officially Adopting The Terre Haute City Code, And Passing Ordinances Addressing Fees, Fines And Regulations".

BE IT ORDAINED by the Common Council of the City of Terre Haute, Indiana, as follows:

SECTION I. That Chapter 10, of the Terre Haute City Code, known and referred to as "The Comprehensive Zoning Ordinance for Terre Haute" of General Ordinance No. 10, 1999, effective, December 10, 1999, Section 10-121, thereof, District Maps, is hereby amended to read as follows:

Lots Number Eighty-Five (85) and Eighty-Six (86) in the Plat of Davis Gardens a Subdivision of part of the North West quarter of Section Three (3), Township Eleven (11) North, Range Nine (9) West, as shown by recorded plat thereof, recorded in Plat Record 11, page 37, records of Recorder's Office of Vigo County, Indiana.

Commonly known as 3404 S. 7th Street, Terre Haute, IN 47802.

be and the same is, hereby established as a C-2 Planned Development, together with all rights and privileges that may inure 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.

That the real estate described shall be a Planned Development in a C-2 Community Commerce District as the same is defined in the Comprehensive Zoning Ordinance for the City of Terre Haute, Indiana, subject to the terms and condition set forth herein.

- (a) In the event that this Planned Development has not materialized within six (6) months of approval, it is understood that said Planned Development becomes void.
- (b) A variance is hereby granted from Section 10-207 e. (1)(A) which states in part :

"...any area contingent or abutting a Residential District shall be buffered by an open space or off-street parking area with a minimum fifty foot (50') width measured at right angles to the residential property line."
- (c) All such rights granted herein shall be fully transferable.

- (d) Said Planned Development shall be recorded in the Vigo County Recorder's Office within ninety (90) days of the approval by the Council.

That the owners have met all of the criteria determined by the Area Planning Commission, except as stated above and by the City Council of Terre Haute, Indiana, that a hardship does exist, due to improvements on the real estate and the physical characteristics of the real estate, and that a Planned Development as set forth herein is hereby approved and will be in the public's interest and in the interest of the neighborhood.

SECTION II. WHEREAS, the Area Planning Commission has considered a petition filed pursuant to General Ordinance No. 10, 1999, being Division III Planned Development; and

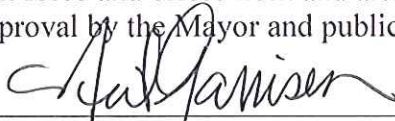
WHEREAS, Amended Special Ordinance No. 14, 2014, has been referred to the Area Planning Commission for its review and consideration and a favorable recommendation has been referred by the Commission to the Common Council; and

WHEREAS, a public hearing on Amended Special Ordinance No. 14, 2014, has been held pursuant to Section 10 of said Ordinance and the owner of the real estate described has demonstrated to the Area Planning Commission and to the Common Council evidence that a hardship exists pursuant to Section 10-112 of said Ordinance and that said Planned Development will not adversely affect surrounding property values, and that it will not adversely affect public health, safety and the general welfare.

BE IT ORDAINED BY THE COMMON COUNCIL of the City of Terre Haute, Indiana that the owners of the real estate described have demonstrated that a hardship does exist for the use of said real estate and that the Common Council of the City of Terre Haute now determines that a hardship does exist and specifically authorizes and approves the uses of the real estate described as a C-2 Planned Development as described in this Ordinance, under the terms and conditions set forth herein, and further finds and determines that the proposed uses described will be in the public interest and that substantial justice will be done.

SECTION III. 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 by law provided.

Presented by Council Member,



Neil Garrison, Councilperson

Passed in open Council this 12th day of June, 2014.



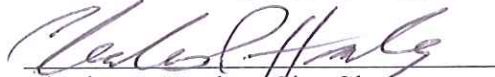
Amy Auler, President

ATTEST:



Charles P. Hanley, City Clerk

Presented by me to the Mayor of the City of Terre Haute, this 13th day of June, 2014.


Charles P. Hanley, City Clerk

Approved by me, the Mayor of the City of Terre Haute, this 13th day of JUNE, 2014.


Duke A Bennett, Mayor

ATTEST:


Charles P. Hanley, 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

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

FILED
MAY 02 2014
CITY CLERK

SPECIAL ORDINANCE NO. 14, 2014

An Ordinance Amending Chapter 10, of the Terre Haute City Code, Zoning and Subdivision Regulations, as adopted by General Ordinance No. 10, 1999, as Amended, entitled "An Ordinance Adopting And Enacting A Code Of Ordinances For The City Of Terre Haute, Indiana; Establishing The Same; Providing For The Repeal Of Certain Ordinances Not Included Therein, Except As Herein Provided; Providing For The Manner Of Amending Such Code Of Ordinances; Providing A Penalty For Violations Thereof; Providing When This Ordinance Shall Become Effective And Officially Adopting The Terre Haute City Code, And Passing Ordinances Addressing Fees, Fines And Regulations".

BE IT ORDAINED by the Common Council of the City of Terre Haute, Indiana, as follows:

SECTION I. That Chapter 10, of the Terre Haute City Code, known and referred to as "The Comprehensive Zoning Ordinance for Terre Haute" of General Ordinance No. 10, 1999, effective, December 10, 1999, Section 10-121, thereof, District Maps, is hereby amended to read as follows:

Lots Number Eighty-Five (85) and Eighty-Six (86) in the Plat of Davis Gardens a Subdivision of part of the North West quarter of Section Three (3), Township Eleven (11) North, Range Nine (9) West, as shown by recorded plat thereof, recorded in Plat Record 11, page 37, records of Recorder's Office of Vigo County, Indiana.

(Commonly known as 3404 S. 7th Street, Terre Haute, Indiana 47802.)

be and the same is, hereby established as a C-2 Community Commerce District, together with all rights and privileges that may inure 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 the City of Terre Haute, and its approval by the Mayor and publication as by law provided.

Presented by Council Member,



Neil Garrison, Councilperson

Passed in open Council this ____ day of _____, 2014.

Amy Auler, President

ATTEST:

Charles P. Hanley, City Clerk

Presented by me, to the Mayor of the City of Terre Haute, this ____ day of _____, 2014.

Charles P. Hanley, City Clerk

Approved by me, the Mayor of the City of Terre Haute, this ____ day of _____, 2014.

Duke A. Bennett, Mayor

ATTEST:

Charles P. Hanley, 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

This instrument prepared by Richard J. Shagley, Attorney-at-Law, WRIGHT, SHAGLEY & LOWERY, P.C., 500 Ohio Street, 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 PLANNING COMMISSION OF VIGO COUNTY, INDIANA.

LADIES and GENTLEMEN:

The undersigned, Fred H. Simmons Jr. and Marilyn R. Simmons, respectfully submit this Petition to Rezone the following described real estate in the City of Terre Haute, Vigo County, State of Indiana, to-wit:

Lots Number Eighty-Five (85) and Eighty-Six (86) in the Plat of Davis Gardens a Subdivision of part of the North West quarter of Section Three (3), Township Eleven (11) North, Range Nine (9) West, as shown by recorded plat thereof, recorded in Plat Record 11, page 37, records of Recorder's Office of Vigo County, Indiana.

(Commonly known as 3404 S. 7th Street, Terre Haute, Indiana 47802.)

The Petitioners are informed and believe that in accordance with Chapter 10, known and referred to as "The Comprehensive Zoning Ordinance for Terre Haute", as amended, the above described real estate is now zoned as R-1 Single Family Residential District.

Your Petitioners would respectfully state that the real estate is now a commercial building which has been used over thirty (30) years as a dentist office. The Petitioner intends to sell the real estate for the use of a physical therapy office.

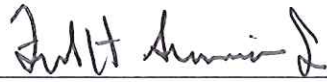
Your Petitioner would request that the real estate described herein shall be zoned as a C-2 Community Commerce District to allow for the use as proposed by Petitioners. Your Petitioners would allege that the C-2 Community Commerce District would not alter the general characteristics of this neighborhood.

Your Petitioners 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 Petitioners respectfully request that the Area Planning Commission and the Common Council of the City of Terre Haute, Indiana, favorably consider the passage of a Special Ordinance amending the District Maps of Chapter 10, of the Terre Haute City Code entitled The Comprehensive Zoning Ordinance for Terre Haute, Section 10-121 District Maps and declaring the above-described real estate to be part of the C-2 Community Commerce District of the City of Terre Haute, Indiana, and is 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, the undersigned Petitioners have executed this Petition to Rezone Real Property, this 2nd day of May, 2014.

PETITIONERS:



Fred H. Simmons, Jr.



Marilyn R. Simmons

WRIGHT, SHAGLEY & LOWERY, P.C.

500 Ohio Street

PO Box 9849

Terre Haute, IN 47808

Phone: (812) 232-3388

BY: 

Richard J. Shagley, #257-84
Attorneys for Petitioners

The owner and mailing address: Fred H. Simmons, Jr. and Marilyn R. Simmons, 3404 S. 7th Street, Terre Haute, IN 47802.

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

SITE PLAN

Date Created: 5/2/2014



| | | | | | |
|------------------------------|---|---------------------|----------------------------|----------------------|-------------------------------|
| Parcel ID | 84-09-03-152-002.000-005 | Alternate ID | 119-09-03-152-002 | Owner Address | SIMMONS FRED H JR & MARILYN R |
| Sec/Twp/Rng | n/a | Class | Com Medical clinic/offices | | 3404 S 7TH STREET |
| Property Address | 3404 S 7TH ST TERRE HAUTE | Acreage | n/a | | TERRE HAUTE, IN 47802 |
| District | 005 HONEY CREEK | | | | |
| Brief Tax Description | DAVIS GARDENS (3402 & 3404 S 7TH ST) MISC-209/1251 & D-372/155-1 3-11-9 LOTS 85-86 <i>(Note: Not to be used on legal documents)</i> | | | | |

Last Data Upload: 5/1/2014 11:39:41 PM

SPECIAL ORDINANCE No. 14, 2014

C-2 COMMUNITY COMMERCE DISTRICT (FROM R-1)

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

AFFIDAVIT

Come now, Fred H. Simmons, Jr. and Marilyn R. Simmons, being duly sworn upon their oaths, depose and say:

1. That Fred H. Simmons, Jr. and Marilyn R. Simmons are the fee simple owners of record of the following described real estate located in the City of Terre Haute, County of Vigo, State of Indiana, to-wit:

Lots Number Eighty-Five (85) and Eighty-Six (86) in the Plat of Davis Gardens a Subdivision of part of the North West quarter of Section Three (3), Township Eleven (11) North, Range Nine (9) West, as shown by recorded plat thereof, recorded in Plat Record 11, page 37, records of Recorder's Office of Vigo County, Indiana.

(Commonly known as 3404 S. 7th Street, Terre Haute, Indiana 47802.)

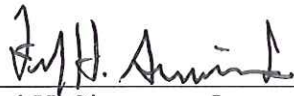
2. That a copy of the Deed, recorded in the records of the Recorder's Office of Vigo County, Indiana, transferring fee simple title to Fred H. Simmons, Jr. and Marilyn R. Simmons is attached hereto and made a part hereof and marked as Exhibit A.

3. That Affiant makes this Affidavit for the sole purpose of affirming that Fred H. Simmons, Jr. and Marilyn R. Simmons are the owners 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 Fred H. Simmons, Jr. and Marilyn R. Simmons.

4. Further, Affiant saith not.

Dated at Terre Haute, Indiana this _____ day of May, 2014.

PETITIONERS:



Fred H. Simmons, Jr.



Marilyn R. Simmons

82-248-8369

155

Duly entered for taxation this 29 day of August 1922

Warranty Deed

Received for record this 29 day of August 1922 at 9 o'clock P. M. and recorded in Book No. 372 Page 153-1

Auditors fees
Frank H. Walker

William Bramble

Auditor Vigo County THIS INDENTURE WITNESSETH Recorder Vigo County

That THOMAS E. DILL and DELLA MAXINE DILL, husband and wife,

of Vigo County, in the State of Indiana
CONVEY AND WARRANT to FRED H. SIMMONS, JR. and MARILYN R. SIMMONS,
husband and wife,

of Vigo County, in the State of Indiana
for and in consideration of the sum of one dollar and other valuable consideration,
the receipt whereof is hereby acknowledged, the following described Real Estate in Vigo
County in the State of Indiana; to-wit:

“ Lots Number Eighty-Five (85) and Eighty Six (86) in the Plat of Davis Gardens a Subdivision of part of the North West quarter of Section Three (3), Township Eleven (11) North, Range Nine (9) West, as shown by recorded plat thereof, recorded in Plat Record 11, page 37, records of Recorder's Office of Vigo County, Indiana.

Taxes pro-rated to date.



IN WITNESS WHEREOF, The said grantor^s above named

have hereunto set their hand and seal, this 26th day of August 1977
Thomas E. Dill (Seal) *Della Maxine Dill* (Seal)
Thomas E. Dill (Seal) Della Maxine Dill (Seal)
(Seal) (Seal)

STATE OF INDIANA, Vigo COUNTY, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 26th day of August A.D. 1977, personally appeared the within named THOMAS E. DILL and DELLA MAXINE DILL, husband and wife,

Grantors
in the above conveyance and acknowledged the execution of the same to be their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Commission expires August 11 1980 *Joseph A. Houston*
Mail to Jovae A. Houston Notary Public

This instrument prepared by This instrument was prepared by LOUIS H. NATTKEMPER
Attorney at Law, 508 Ohio Street, Terre Haute, Indiana

Receipt

The following was paid to the City of Terre Haute, Controller's Office.

Date: 5/2/2014

Name: Iled Summers

Reason: _____

Payroll

ck# 67796

Cash: _____

Check: 45.00

Credit: _____

Total: 45.00

TERRE HAUTE, IN
PAID

MAY - 2 2014

CONTROLLER

Received By: E. Allen / J. G.



Area Planning Department For Vigo County

159 Oak Street, Terre Haute, Indiana 47807
Telephone: (812) 462-3354 Fax: (812) 234-3248

Terre Haute • West Terre Haute • Riley • Seelyville

DATE: June 5, 2014

REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO
SPECIAL ORDINANCE NUMBER #14-14

CERTIFICATION DATE: June 4, 2014

TO: The Honorable Common Council of the City of Terre Haute

Dear Members,

The Vigo County Area Plan Commission offers you the following report and certification on Special Ordinance No. 14-14. This Ordinance is a rezoning of the property located at 3404 South 7th Street. The Petitioner, Fred H. Jr., and Marilyn R. Simmons, Petitions the Plan Commission to rezone said real estate from zoning classification R-1 to C-2, Community Commerce District for a physical therapy office. The Ordinance was published in the Tribune-Star Newspaper in accordance with IC 5-3-1 and Division XIII of the Comprehensive Zoning Ordinance. Further, this ordinance was posted by the City Building Inspection Department in accordance with IC 36-7-4-604(c).

The Area Plan Commission considered Special Ordinance No. 14-14 at a public meeting and hearing held Wednesday, June 4, 2014. Remonstrators were not present. At this meeting, a quorum was present throughout the meeting pursuant to IC 36-7-4-301, and the Area Plan Commission took official action on Special Ordinance No. 14-14 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No. 14-14 as required by IC 36-7-4-401(a)(7) and IC 36-7-4-605(c).

Therefore, Area Plan Commission's certified recommendation on Special Ordinance No. 14-14 was FAVORABLE.

Fred L. Wilson, President

Darren Maher, Executive Director

Received this 5th day of June, 2014

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #14-14

Doc: # 22

Date: June 4th, 2014

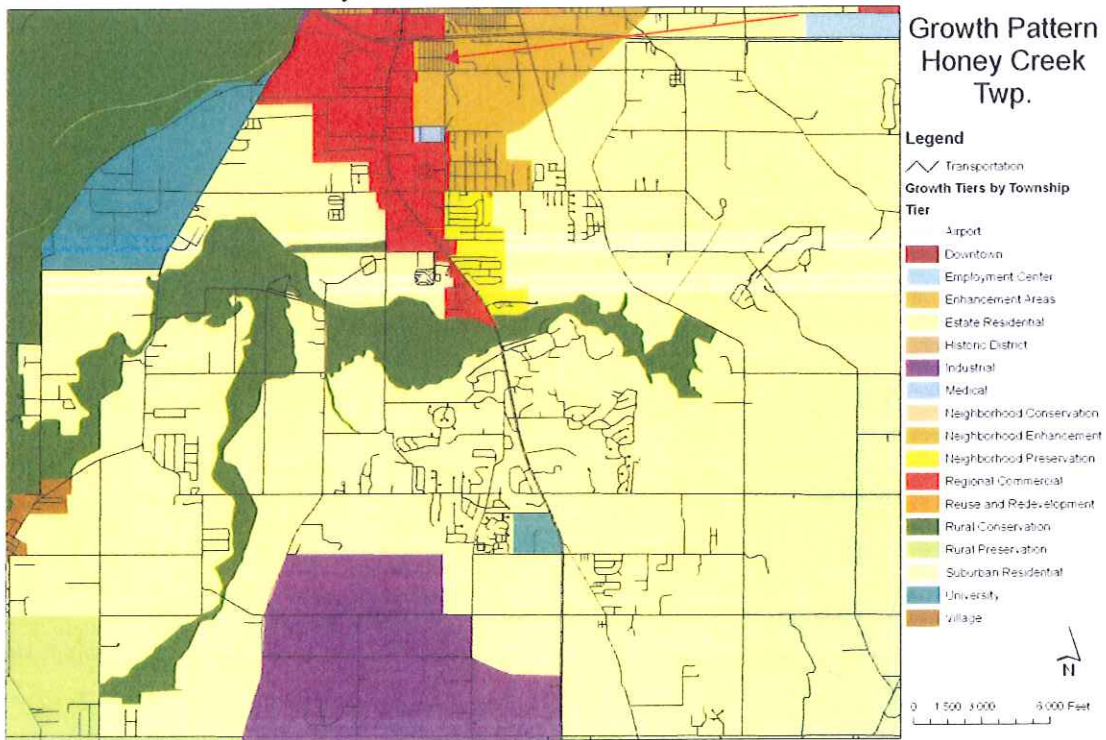
Page 1 of 4

APPLICATION INFORMATION

- ✓ Petitioner: Fred H. Simmons Jr. & Marilyn R. Simmons
- Property Owner: Same-As-Above
- Representative: Richard J. Shagley
- ✓ Proposed Use: Physical Therapy Office
- ✓ Proposed Zoning: C-2, PD Limited Community Commercial District
- ✓ Current Zoning: R-1, Single-Family Residence District
- ✓ Location: The property is located on the east side of South 7th Street, 100 ft south of the intersection of East Elizabeth Dr. and South 7th Street.
- ✓ Common Address: 3404 South 7th Street, Terre Haute, IN 47802

COMPREHENSIVE PLAN GUIDANCE

Service Area: The City of Terre Haute



STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #14-14

Doc: # 22

Date: June 4th, 2014

Page 2 of 4

Guiding Policies: Enhancement Areas[✓]

- Encourage infill development that is compatible with the land use mix and intensity of existing development.
- Support preservation and rehabilitation of historic properties.
- Incompatible and inconsistent uses with residential context of these neighborhoods should be eliminated.
- Encourage neighborhoods to develop a unique sense of place, but still be part of the larger city.

✓ Available Services: Area is well served by utilities.

Soil Limitations: Not studied.

✓ Street Access: South 7th Street is a Secondary Arterial Roadway, which provides for intra-community travel mobility and linkage from neighborhood regions to the primary and rural arterial network.

✓ Dev. Priority: There is a high priority for new commercial development within this area as there already is a presence of commercial uses. Permitting a low intensity commercial use will buffer the adjacent residential component of this neighborhood from the intense regional commercial uses.

ZONING COMPATIBILITY

✓ Sur. Zones and Uses: **North** – R-1, Single Family Residence District, C-5, General Central Business District, C-2, Community Commerce District,
East – R-1, Single Family Residence District, C-1, Neighborhood Commerce District
South – R-1, Single Family Residence District, C-1, Neighborhood Commerce District, C-2, Community Commerce District, C-6, Strip Business District
West – R-1, Single Family Residence District, and C-2, Community Commerce District

Character of Area: The petition property is located on the eastern fringe of the I-70 and U.S. Highway 41 Regional Commercial Zone. This area is characterized with a mix of single family residential homes, and small to medium size strip business centers. Many of the residential dwellings have been converted into non-conforming commercial uses.

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #14-14

Doc: # 22

Date: June 4th, 2014

Page 3 of 4

Contig. Uses & Zones: The contiguous zoning is C-2, Community Commerce District with commercial uses that are permitted.

ZONING REGULATIONS

C-2 Purpose: The Community Commerce Zone is designed for the residents of the nearby community consisting of more than one (1) of the neighborhoods in that section of the city, so as to permit a wider variety of both business uses and services. It is designed not for an abutting neighborhood, but for a relatively larger consumer population for both daily and occasional shopping. The development is characterized by a lack of “comparison shopping” and is limited to providing only one (1) store for each type of business.

C-2 Uses: Antique shops, Art galleries, but not including auction rooms, Banks and financial institutions, Bicycle sales, rental, and repair stores, Blue-printing and photos tatting establishments, Books and stationery stores, Camera and photographic supply stores, Candy and ice cream stores, Leather goods and luggage stores, Loan offices, Locksmith shops, Medical and dental clinics, Meeting halls, Millinery shops, Municipal or privately-owned recreation buildings or community-center, Musical instrument sales and repair, Newspaper distributors for home delivery and retail sale, Office supply stores, Offices, business and professional, Optometrists, Paint and wallpaper stores, Restaurants. Liquor may be served if incidental to the serving of food as the principal activity. (Gen. Ord. No. 2, 2007, As Amended, 2-8-07), Live entertainment. (Gen. Ord. No. 2, 2007, As Amended, 2-8-07)

*the proposed
used meets all uses
and standards*

C-2 Standards: Minimum Lot Size: 3,300 Sq. Ft.
FAR 0.9 %
Street Setback: 55 feet from centerline;
Rear setback 11’;
Interior setback of 5’ from the interior lot line;
Parking Requirements will be determined through site-plan review

FINDINGS and RECOMMENDATION

Staff Findings: The proposed commercial development is in harmony with the comprehensive plan, but the existing built improvements will not meet the development standards of the C-2, Community Commercial District. C-2 Districts require a minimum buffer strip 50 feet wide measured at right angles when contingent or abutting a Residential District. Rezoning this property to C-2 will create a non-conforming use. Staff suggests the applicant amend the petition to a C-2 Planned Development that includes a request for a variance to reduce the required 50 ft. buffer area setback and the required parking spaces.

A lower commercial intensity at this location will function as a buffer between the Regional Commercial Uses and Zoning to the West and the Residential Uses to the east of this property.

The Thrive 2025 Comprehensive Plan has identified this area within the City of Terre Haute as an Enhancement Area. The development priority for commercial development within this area could be low to high intensity based on the local thoroughfare network. High to medium intensity commercial development and uses need to have direct access without traffic intrusion onto residential neighborhoods, and needs the appropriate buffering.

Buffered from adjacent residential uses by all of the following:

- Scale of building design
- Landscaping
- Loading

Recommendation: Staff has a Favorable Recommendation for a C-2 PD, Community Commercial Planned Development District.