

SPECIAL ORDINANCE NO. 28, 2017

APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE

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Common Address of lots to be rezoned:

1120 Beech Street, Terre Haute, IN 47807

Rezone From: R-2 Two-Family Residence District

Rezone To: R-2 Planned Development

Proposed Use: Outdoor Equipment Storage

Name of Owner: Flyer Properties LLC
Address of Owner: 1033 Lafayette Avenue
Terre Haute, IN 47804

Phone Number of Owner c/o (812) 232-3388

Attorney Representing Owner: Richard J. Shagley, II

Address of Attorney: Wright, Shagley & Lowery, P.C.
PO Box 9849, Terre Haute, IN 47808

For Information Contact: Owner Attorney

Council Sponsor: Amy Auler

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COPY OF A SITE-PLAN MUST ACCOMPANY THIS APPLICATION

FILED

JUN 13 2017

SPECIAL ORDINANCE NO. 28, 2017

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 28 and 29 in James Crook's Subdivision of Lot 22 of Spencer's Subdivision of the Northwest Quarter of Section 15, Township 12 North of Range 9 West.

Commonly known as: 1120 Beech Street, Terre Haute, IN 47804.

be and the same is, hereby established as a R-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 R-2 Planned Development 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) That the real estate shall be used for any use permitted in a R-2 Planned Development.
- (b) 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.
- (c) 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."

- (d) All such rights granted herein shall be fully transferable.
- (e) 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 the improvements on the real estate, the physical characteristics of the real estate, the real estate is located near district boundary lines, 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

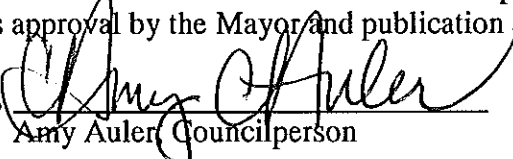
WHEREAS, Special Ordinance No. 28, 2017, has been referred to the Area Planning Commission for its review and consideration and a favorable recommendation has been referred by the Commission to the Common Council; and

WHEREAS, a public hearing on Special Ordinance No. 28, 2017, 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.

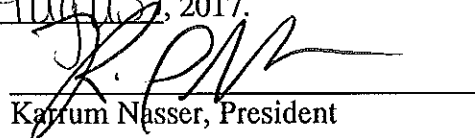
BE IT ORDAINED BY THE COMMON COUNCIL of the City of Terre Haute, Indiana that the owners of the real estate described have demonstrated that a hardship does exist for the use of said real estate and that the Common Council of the City of Terre Haute now determines that a hardship does exist and specifically authorizes and approves the uses of the real estate described as a R-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,


Amy Auler, Councilperson


Passed in open Council this 10th day of August, 2017.


Karim Nasser, President

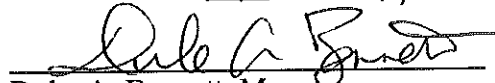
ATTEST:


Charles P. Hanley, City Clerk

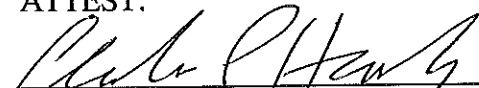
Presented by me, to the Mayor of the City of Terre Haute, this 11th day of August, 2017.


Charles P. Hanley, City Clerk

Approved by me, the Mayor of the City of Terre Haute, this 11th day of AUGUST, 2017.


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, II

This instrument prepared by Richard J. Shagley, II, 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, Flyer Properties, LLC, by Jacob A. Hellmann, President, respectfully submits this Petition to Rezone the following described real estate in the City of Terre Haute, Vigo County, State of Indiana, to-wit:

Lots 28 and 29 in James Crook's Subdivision of Lot 22 of Spencer's Subdivision of the Northwest Quarter of Section 15, Township 12 North of Range 9 West.

Commonly known as: 1120 Beech Street, Terre Haute, IN 47804.

The Petitioner is informed and believes 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-2 Two-Family Residence District.

Your Petitioner would respectfully state that the real estate is now a single-family home. The Petitioner intends to use the real estate for the storage of equipment for its construction business located across the street.

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

Your Petitioner would allege that there is a hardship due to: 1) improvements on the real estate (nature of structure in a mixed use neighborhood; 2) the physical characteristics of the land (the shape of Petitioner's parcel); and 3) the parcel is located near district boundary lines (the other parcels owned by Petitioner in the area are zoned commercial).

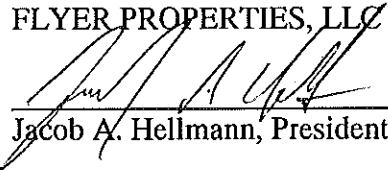
Your Petitioner would respectfully show the proposed change would not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood.

WHEREFORE, your Petitioner respectfully requests that the Area 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 R-2 Planned Development 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 Petitioner has caused this Petition to Rezone Real Property to be executed, this 2nd day of June, 2017.

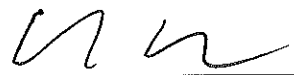
PETITIONER:

FLYER PROPERTIES, LLC



Jacob A. Hellmann, President

WRIGHT, SHAGLEY & LOWERY, P.C.
500 Ohio Street
PO Box 9849
Terre Haute, IN 47808
Phone: (812) 232-3388

BY: 

Richard J. Shagley, II #23135-84
Attorneys for Petitioner

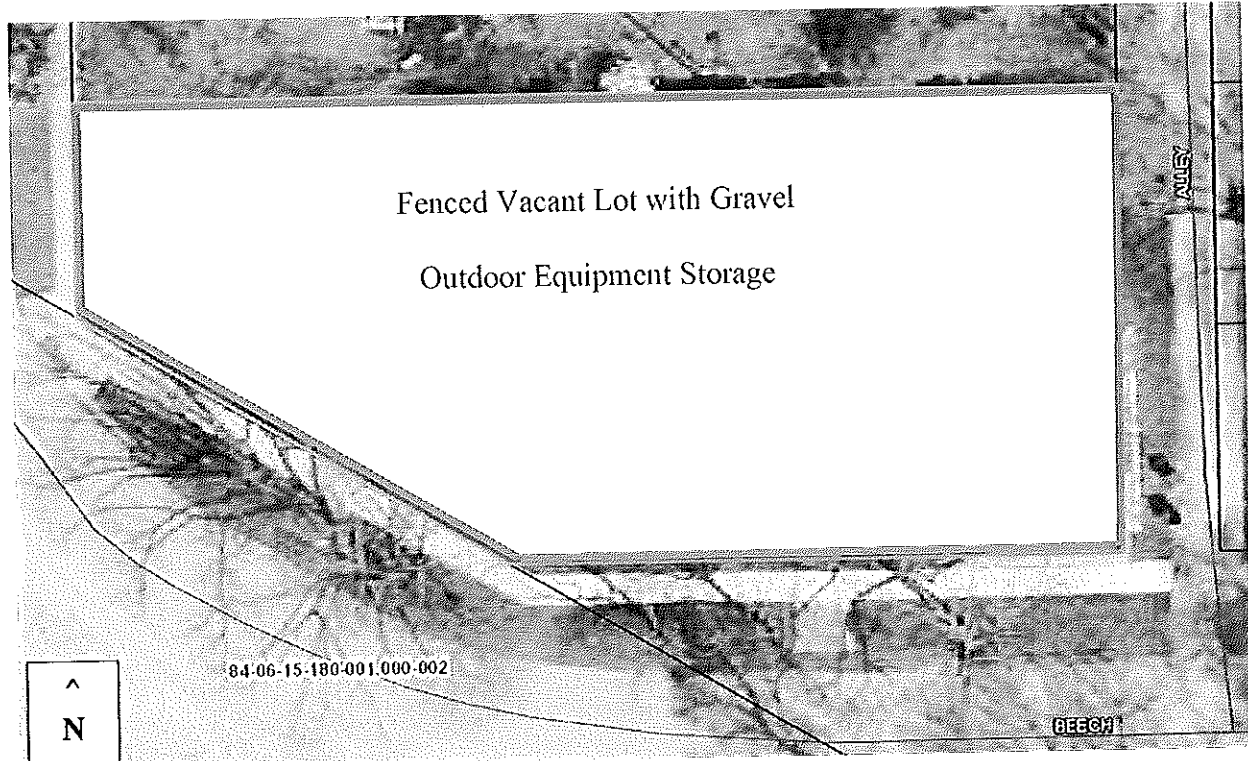
The owner and mailing address: 1033 Lafayette Avenue, Terre Haute, Indiana 47804.

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. 28, 2017

1120 Beech Street, Terre Haute, IN 47807
R-2 to R-2: Planned Development
Proposed Use: Outdoor Equipment Storage



DAILY ENTERED FOR TAXATION
Subject to final acceptance for transfer

2017001440 WD \$18.00
02/14/2017 02:55:31P 2 PGS
Stacey Todd
VIGO County Recorder IN
Recorded as Presented

FEB 14, 2017

James W. Bennett
VIGO COUNTY AUDITOR

WARRANTY DEED

THIS INDENTURE WITNESSETH that Paul E. Bridgewater and Marilee A. Bridgewater, "Grantor" of the State of Indiana, CONVEYS, GRANTS, AND WARRANTS to Flyer Properties, LLC, "Grantee" of the State of Indiana, for and in consideration of One Dollar (\$1.00) 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 28 and 29 in James Crook's Subdivision of Lot 22 of Spencer's Subdivision of the Northwest Quarter of Section 15, Township 12 North of Range 9 West.

Commonly known as: 1120 Beech Street, Terre Haute, IN 47804

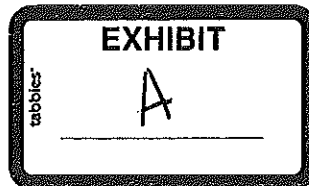
Subject to easements, covenants, restrictions, leases and other matters of record affecting title to the subject real estate, as well as rights of way for drainage tiles, ditches, feeders and laterals, if any.

Taxes shall be prorated to the date of this deed.

DATED this 13 day of February, 2017.

Paul E. Bridgewater
Paul E. Bridgewater

Marilee A. Bridgewater
Marilee A. Bridgewater

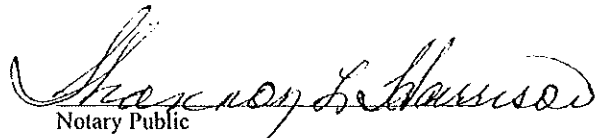


STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

Before me, the undersigned, a Notary Public in and for said County and State, this 13 day of February, 2017, personally appeared Paul E. Bridgewater and Marilce A. Bridgewater, and acknowledged the execution of the foregoing deed.

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

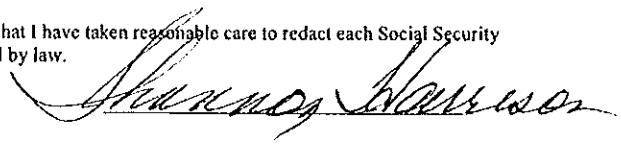
My Commission Expires: _____


Notary Public
Printed: _____
Residing in _____ County

Mail Tax Statements To Grantee at: 1033 Lafayette Ave
47804

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

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.



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: 17 0190

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

AFFIDAVIT

Comes now, Jacob A. Hellmann, President of Flyer Properties, LLC, being duly sworn upon his oath, deposes and says:

1. That Flyer Properties, LLC is the fee simple owner of record of the following described real estate located in the City of Terre Haute, County of Vigo, State of Indiana, to-wit:

Lots 28 and 29 in James Crook's Subdivision of Lot 22 of Spencer's Subdivision of the Northwest Quarter of Section 15, Township 12 North of Range 9 West.

Commonly known as: 1120 Beech Street, Terre Haute, IN 47804.

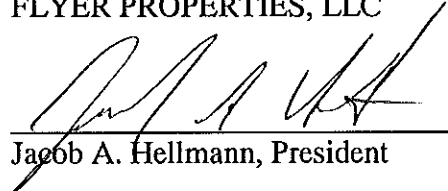
2. That copies of the Deed, recorded in the records of the Recorder's Office of Vigo County, Indiana, transferring fee simple title to Flyer Properties, LLC is attached hereto and made a part hereof and marked as Exhibit A.

3. That Affiant makes this Affidavit for the sole purpose of affirming that she 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 Flyer Properties, LLC

4. Further, Affiant saith not.

Dated at Terre Haute, Indiana this 2nd day of June, 2017.

FLYER PROPERTIES, LLC



Jacob A. Hellmann, President

(Notary Page to Follow)

Receipt

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

Date: 6/14/17

Name: Flyer Properties LLC

Reason: <u>Rezoning - Notice of Filing</u>	<u>\$25.00</u>
<u>Rezoning - Petition</u>	<u>\$20.00</u>
	<u>\$45.00</u>

Cash: _____

Check: #67415 45.00

Credit: _____

Total: \$45.00

Received By: *S. Ellis*

TERRE HAUTE, IN
PAID
JUN 14 2017
CONTROLLER



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: August 3, 2017

REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO
SPECIAL ORDINANCE NUMBER #28-17

CERTIFICATION DATE: August 2, 2017

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

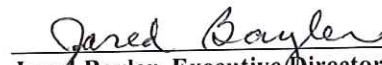
Dear Members,

The Vigo County Area Plan Commission offers you the following report and certification on Special Ordinance No. 28-17. This Ordinance is a rezoning of the property located at 1120 Beech Street. The Petitioner, Flyer Properties, LLC, petitions the Plan Commission to rezone said real estate from zoning classification R-2 to R-2 Planned Development District, for outdoor equipment storage. 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. 28-17 at a public meeting and hearing held Wednesday, August 2, 2017. 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. 28-17 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No. 28-17 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. 28-17 was FAVORABLE WITH THE FOLLOWING CONDITIONS: 1) That the existence of a hardship be demonstrated; 2) The rezoning must be recorded within 90 days.


Fred L. Wilson, President


Jared Bayler, Executive Director

Received this 3rd day of August, 2017

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #28-17

Doc: # 61

Date: August 2017

Page 1 of 4

APPLICATION INFORMATION

Petitioner: Flyer Properties LLC

Property Owner: Same-As-Above

Representative: Richard J. Shagley, II

Proposed Use: Outdoor Equipment Storage

Proposed Zoning: R-2, Planned Development District

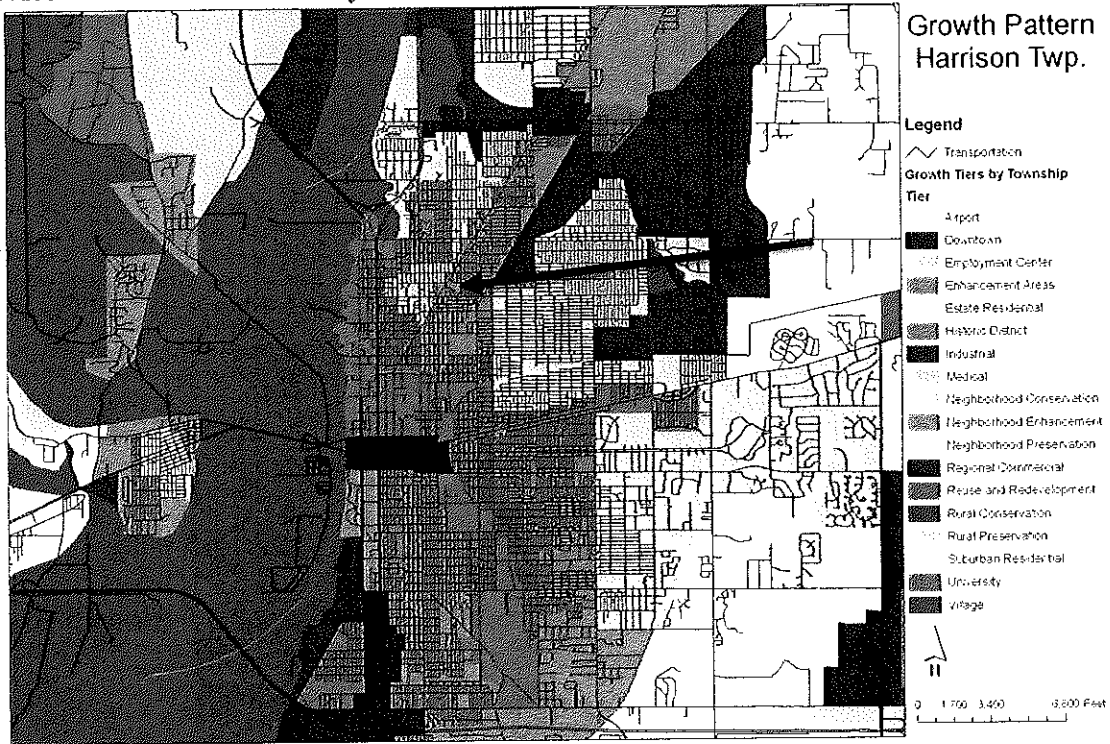
Current Zoning: R-2, Two-Family Residence District

Location: The property located on the corner of N. 11th Street and Beech Street approximately 200 ft. east of Lafayette Avenue.

Common Address: 1120 Beech Street, Terre Haute, IN 47807

COMPREHENSIVE PLAN GUIDANCE

Service Area: The City of Terre Haute



Neighborhood Enhancement Areas

Areas that qualify as Neighborhood Enhancement, represent residential areas with aging housing stock, older industrial areas that are in need of reinvestment, and neighborhood commercial nodes that need assistance in meeting modern development standards. These areas are primarily located within the Terre Haute, West Terre Haute, Seelyville, and Riley.

In regards to residential neighborhoods that are in need of rehabilitation, they should receive priority efforts with respect to public improvements such as drainage, sidewalks, street, curb and gutter repair and replacement, and landscaping in the public rights-of-way. Where appropriate, new residential infill projects should be considered a high priority for undeveloped parcels. Over time incompatible and inconsistent uses with the residential context of these neighborhoods should be eliminated.

Over time, it is reasonable to expect some displacement of existing industrial facilities, either because of functional and competitive obsolescence of facilities themselves or because corporate restructuring. As facilities are displaced, facility reuse plans or site redevelopment plans should be prepared. In some cases, industrial reuse or redevelopment may not be appropriate, for example in older core of the City of Terre Haute.

Neighborhood commercial areas are small scale, retail activity clusters or planned centers that serve limited market areas – typically 4,000 to 10,000 people. They provide shopping opportunities for those most frequently purchased goods and services. Neighborhood commercial areas should be distributed throughout the community in relationship to the distribution of households. Each neighborhood commercial center should be a master planned commercial development that is contained within a defined tract or land area. Auto ingress and egress must be controlled. Most importantly, these areas should relate to surrounding residential neighborhoods but not adversely impact the livability of those neighborhoods through traffic, lighting, noise, litter, or other impacts. They will require strong buffering and landscape regulations, as well as being architecturally harmonized and able to blend with their neighborhood context.

Additional policies for Neighborhood Enhancement Areas should include:

- 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 the residential context of these neighborhoods should be eliminated.
- Identify areas that need sub-area plans and prioritize the development of those plans by area.
- Allow for a range of housing densities based on the zoning ordinance.
- Encourage neighborhoods to develop a unique sense of place, but still be part of the larger city.

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #28-17

Doc: # 61

Date: August 2017

Page 3 of 4

Dev. Priority: High intensity residential

ZONING COMPATIBILITY

Sur. Zones and Uses: **North** – R-2, C-2

East – R-2, Two Family

South – R-2, Two Family

West – R-2, C-2

ZONING REGULATIONS

R-2 Two Family Residence District

Uses, Permitted - R-2 Two-Family Residence District.

- (1) Any use permitted in the R-1 District.
- (2) Dwellings - one and two family attached or detached.

Planned Developments

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.

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.

When it is determined by the Area Plan Commission and the City Council that a hardship does exist, a Planned Development of certain uses may be approved for any zoned lot. However, it must be determined that said proposed uses, if approved, will be in the public's interest and that substantial justice will be done for that neighborhood. Approval of said proposed uses shall not have the intent of nullifying the purpose of these zoning regulations.

FINDINGS and RECOMMENDATION

Staff Findings: The Petitioner is currently utilizing the property to store equipment and materials related to the construction industry. The site is a former home location. The home was demolished. The surface has been improved with rock.

The use of the PD classification is a protection for the neighborhood. Should the use be abandoned it would revert to the R-2 zoning. Rezoning to allow for outdoor storage would require a much more intense zoning classification that would not be in harmony with the surrounding land uses.

In order to receive the PD zoning a hardship as listed above must be present. The petitioner's representative must demonstrate the hardship as one is not evident.

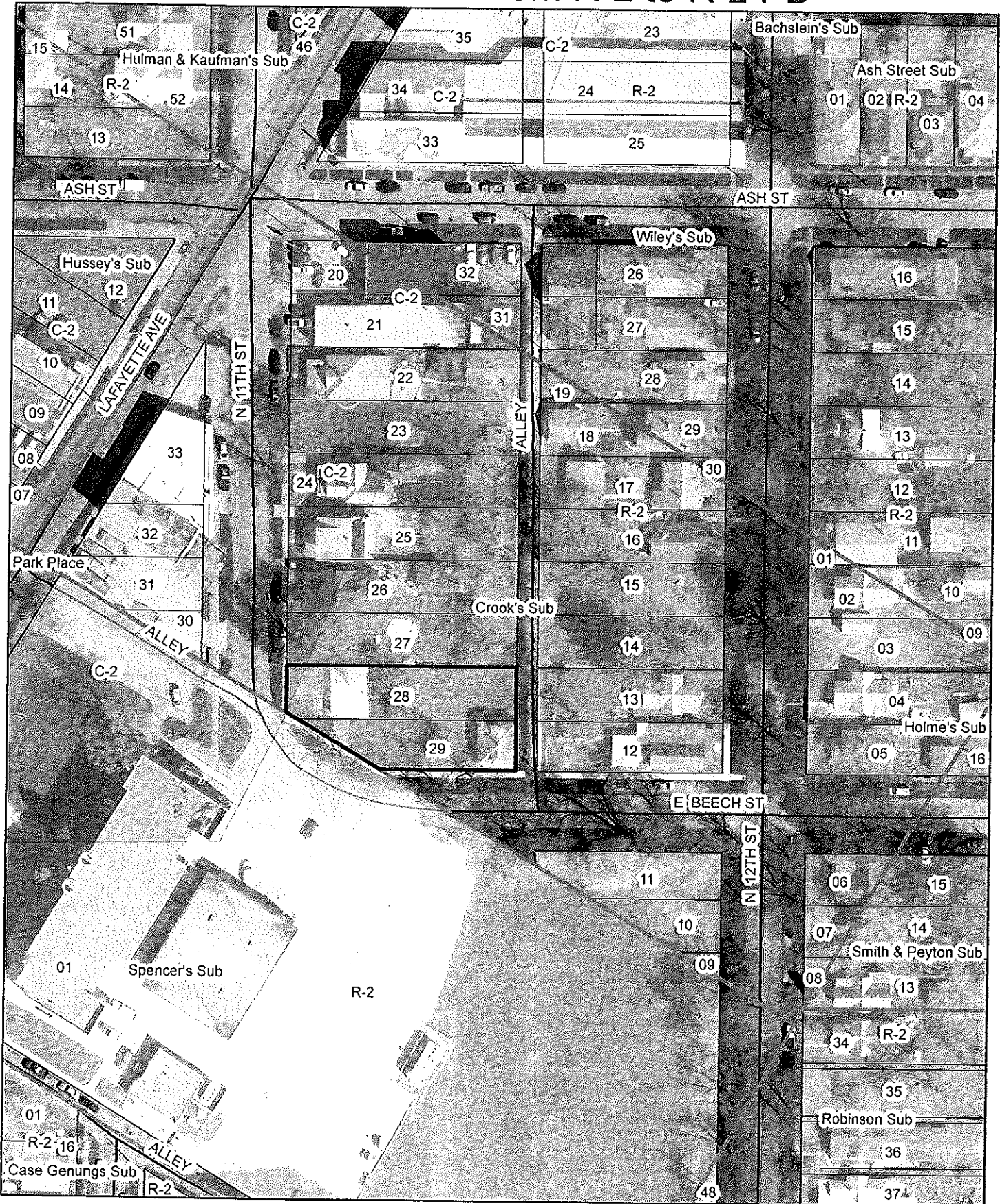
Visual screening has been put in place by the petitioner. The segment of the sidewalk that was destroyed by the equipment as well as the existing drive cut have been repaired.

Recommendation: Staff has a Favorable Recommendation for the R-2PD with the following condition:

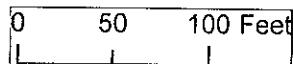
1. That the existence of a hardship be demonstrated.
2. The rezoning must be recorded within 90 days.

Docket #61, S.O. #28-17

1120 Beech St. From R-2 to R-2 PD



Parcel: 84-06-15-177-024.000-002



Area-of-Interest

Prepared by the Vigo County
Department of Area Planning