

SPECIAL ORDINANCE NO. 1, 2023

APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE

=====

Common Address of lots to be rezoned:

430 S. 7th Street, Terre Haute, Indiana 47807

Parcel No. 84-06-27-103-005.000-002

Rezoned From: R-2 Two-Family Residence District

Rezoned To: C-3 Regional Commerce District

Proposed Use: Commercial Building with second story apartment

Name of Owners: YXION Incorporated

Address of Owners: 3207 N 167th Dr
Goodyear, AZ 85395

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 47808

For Information Contact: Owner Attorney

Council Sponsor: Todd Nation

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COPY OF A SITE-PLAN MUST ACCOMPANY THIS APPLICATION

FILED

JAN 04 2023

SPECIAL ORDINANCE FOR A REZONING
SPECIAL ORDINANCE NO. 1, 2023

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:

The South Half of Lot Numbered (15) in Aaron B. Fontaine's Addition to the Town, now City of Terre Haute, Indiana, as shown on the recorded plat thereof recorded in Deed Record 7, Page 185, records of the Vigo County Recorder's Office.

Parcel No. 84-06-27-103-005.000-002

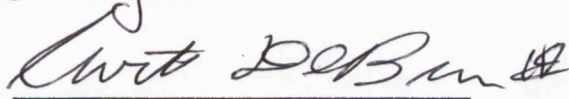
Commonly known as: 430 S. 7th St., Terre Haute 47807.

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, 
Todd Nation, Councilperson

Passed in open Council this 2nd day of February, 2023.


Curtis DeBann IV, President


ATTEST:


Michelle Edwards, City Clerk

Presented by me, to the Mayor of the City of Terre Haute, this 3rd day of February, 2023.


Michelle Edwards, City Clerk

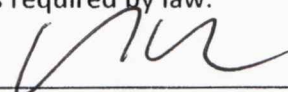
Approved by me, the Mayor of the City of Terre Haute, this 3rd day of FEBRUARY, 2023.


Duke A. Bennett, 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

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 GENTLEMAN:

The undersigned, Norma Laxer, President of Yxion Incorporated, respectfully submits this Petition to rezone the following described real estate in the City of Terre Haute, County of Vigo, Indiana, to wit:

The South Half of Lot Numbered (15) in Aaron B. Fontaine's Addition to the Town, now City of Terre Haute, Indiana, as shown on the recorded plat thereof recorded in Deed Record 7, Page 185, records of the Vigo County Recorder's Office.

Parcel No. 84-06-27-103-005.000-002

Commonly known as: 430 S. 7th St., Terre Haute 47807.

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 R-2 Two Family Residence District.

Your Petitioner intends to use this real estate for commercial use on the first floor and a private residence on the second floor in the already existing apartment. 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 the neighborhood is a mixed-use neighborhood and there are several commercial uses in this area. That this site has been used for similar purposes in the past but under the cover of a non-confirming use.

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 owners 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 28 day of December, 2022.

PETITIONER:

A handwritten signature in black ink, appearing to read 'N. Laxer', written over a horizontal line.

**Norma Laxer, President of Yxion
Incorporated**

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.

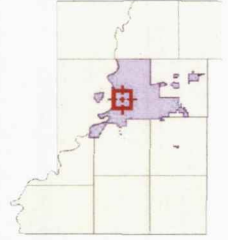
SITE PLAN

4 N

Beacon™ Vigo County, IN / City of Terre Haute



Overview



Legend

- Corporate Limits
- Political Township
- Sections
- Blocks
- Parcels
- Road Centerlines
- 2022 Sales

Parcel ID	84-06-27-103-005.000-002	Alternate ID	84-06-27-103-005.000-002	Owner Address	Yxion Incorporated
Sec/Twp/Rng	27	Class	Com Small retail LT 10000 SF		18291 N. Pima Rd STE 110
Property Address	430 S 7TH ST	Acreage	n/a		c/o Laxer #417
	TERRE HAUTE				Scottsdale, AZ 85255
Neighborhood	118313 - HARRISON				
District	002 HARRISON				
Brief Tax Description	FOUNTAINS ADD S-1/2				
	D-411/51 27-12-9 LOT 15				
	(Note: Not to be used on legal documents)				

Date created: 1/4/2023
Last Data Uploaded: 1/4/2023 6:13:20 AM

Developed by Schneider
GEOSPATIAL

430 S. 7th ST
Terre Haute
R-2 to C-3

STATE OF INDIANA) SS:
COUNTY OF VIGO)

AFFIDAVIT

Comes now, Norma Laxer, President of Yxion Incorporated, being duly sworn upon his oath, deposes and says:

1. That Yxion Incorporated 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:

The South Half of Lot Numbered (15) in Aaron B. Fontaine's Addition to the Town, now City of Terre Haute, Indiana, as shown on the recorded plat thereof recorded in Deed Record 7, Page 185, records of the Vigo County Recorder's Office.

Parcel No. 84-06-27-103-005.000-002

Commonly known as: 430 S. 7th St., Terre Haute 47807.

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 Yxion Incorporated 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 Yxion Incorporated.

4. Further, Affiant saith not.

Dated at Terre Haute, Indiana this 28 day of December, 2022.



Norma Laxer, President of Yxion
Incorporated

STATE OF Arizona)
) SS:
COUNTY OF Maricopa

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for said County and State, this 28 day of December, 2022.



Patricia Wegehaupt
_____, Notary Public

My Commission expires: 12-03-2026

My County of Residence: Maricopa

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.

DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer

APR 19, 2017


VIGO COUNTY AUDITOR

2017003685 TT \$18.00
04/19/2017 02:10:40P 2 PGS
Stacey Joy Fueston
VIGO County Recorder IN
Recorded as Presented



TRUSTEES' DEED

This deed made this 17th day of April, 2017, by Donald E. Carlevato and Peggy K. Carlevato, as Co-Trustees of The Carlevato Revocable Trust Dated October 4, 2006;

WITNESSETH:

WHEREAS, by that deed dated June 30, 2010 and recorded July 1, 2010, in Instrument Number 2010007881, in records of the Recorder's Office of Vigo County, Indiana, the subject real estate was conveyed to The Carlevato Revocable Trust Dated October 4, 2006.

NOW, THEREFORE, Donald E. Carlevato and Peggy K. Carlevato, as Co-Trustees of The Carlevato Revocable Trust Dated October 4, 2006, pursuant to authority granted to them under the above-referred to Trust Instrument, **CONVEY AND GRANT** to Yxion Incorporated for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the following described real estate located in the County of Vigo, State of Indiana, to-wit:

The South Half of Lot Numbered Fifteen (15) in Aaron B. Fountaine's Addition to the Town, now City of Terre Haute, Indiana, as shown on the recorded plat thereof recorded in Deed Record 7, Page 185, records of the Vigo County Recorder's Office.

Subject to easements, covenants, restrictions, leases and other matters of record affecting title to the subject real estate.

Subject to Indiana real property taxes prorated to date hereof.

Grantors-Trustees represent under oath that they are the current duly appointed Trustees of said Trust and that said Trust authorizes the Trustees to hold and convey real estate and this deed is executed pursuant to and in the exercise of the power and authority granted to the Trustees under said Trust Agreement and that the powers referred to in said instrument have never been altered or modified so as to prohibit this conveyance and said Trust is still in existence.

IN WITNESS WHEREOF, Donald E. Carlevato and Peggy K. Carlevato, as Co-Trustees of The Carlevato Revocable Trust Dated October 4, 2006 have hereunto set their hand and seal this 17th day of April, 2017.

Receipt

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

Date: 1/4/23

Name: Yxion - Rezoning

Reason: \$25

Notice of filing \$20

rezoning-petition \$45.00

TERRE HAUTE, IN
PAID
JAN 4 2023
CONTROLLER

Cash: _____

Check: # 073147

Credit: _____

Total: 45-

Received By: LEWIS



TERRE HAUTE
A LEVEL ABOVE

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: February 2, 2023

REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO
SPECIAL ORDINANCE NUMBER 1-23

CERTIFICATION DATE: February 1, 2023

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

Dear Members,

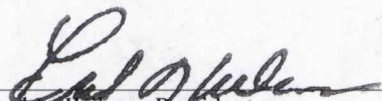
The Vigo County Area Plan Commission offers you the following report and certification on Special Ordinance No. 1-23. This Ordinance is a rezoning of 430 S. 7th Street. Parcel # 84-06-27-103-005.000-002. The Petitioner, YXION Incorporated petitions the Plan Commission to rezone said commercial building with second story apartment from zoning classification R-2 to C-3 Regional Commerce District.

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. 1-23 at a public meeting and hearing held Wednesday, February 1, 2023. 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. 1-23 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No. 1-23 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. 1-23 was FAVORABLE WITH NO CONDITIONS.




Fred L. Wilson, President


Jared Bayler, Executive Director

Received this 2nd day of February, 2023

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #1-23
Date: February 2023

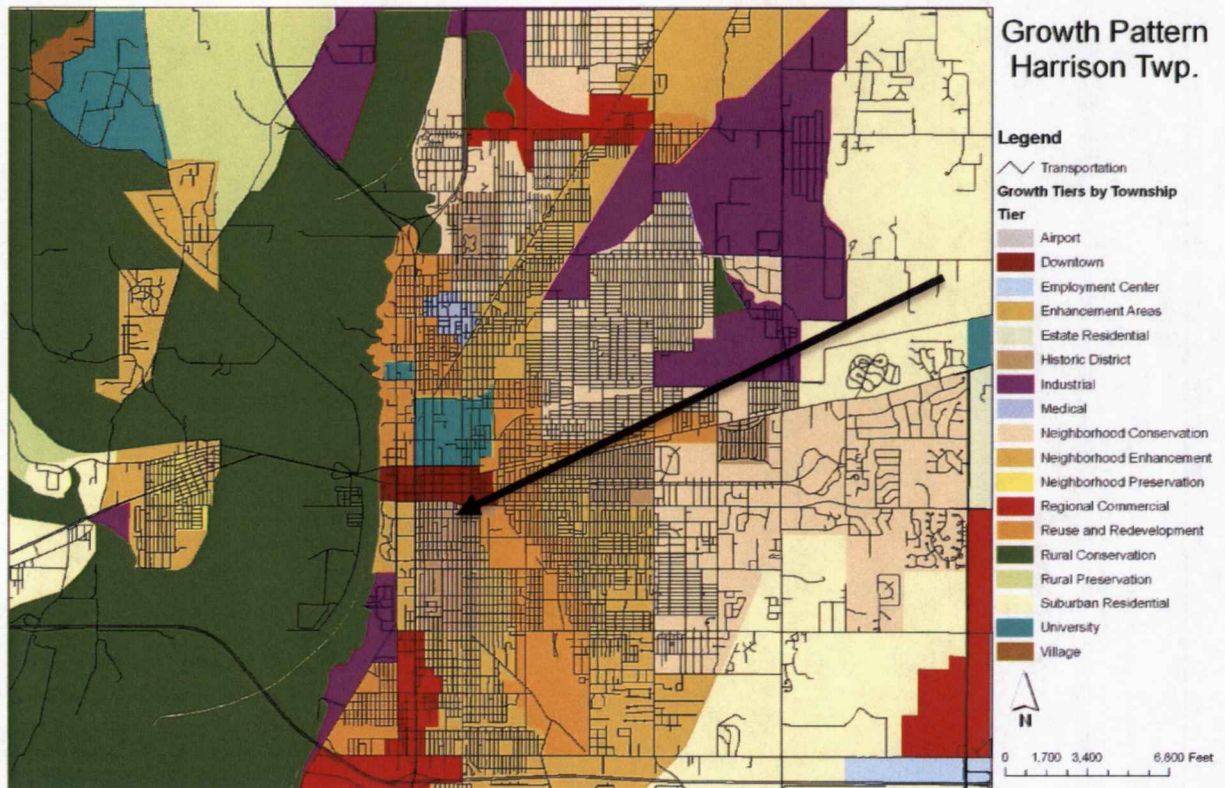
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APPLICATION INFORMATION

Property Owners: YXION Incorporated
Proposed Use: Commercial Building with second story apartment.
Proposed Zoning: C-3, Regional Commerce District
Current Zoning: R-2, Two-Family Residence District
Representative: Richard Shagley
Location: The property is located on the corner of S. 7th Street & Oak Street. Fountains Adds Lot 15
Common Address: 430 S. 7th Street, T.H. 84-06-27-103-005.000-002

COMPREHENSIVE PLAN GUIDANCE

Service Area: Terre Haute



ZONING COMPATIBILITY

Historic Districts

Historic Districts are locations within the community that are important because of historic events, their architectural or cultural significance, or a connection to the lives of the people who lived there that should be protected and enhanced as an amenity to region. There are two types of historic districts:

- **National Register Historic Districts.** The National Register is a nation-wide list of buildings or areas certified by the Secretary of Interior as important architecturally, historically or culturally. Individual buildings and those in a district are eligible for Federal and Indiana tax credits for rehabilitation and tax reductions for easement donation. Listing a building on the National Register does not trigger local review of changes to the building unless the project is federally funded.
- **Local Historic Districts.** Local Historic Districts can be created by local ordinance, and are regulated by a historic district design standards in that ordinance. These standards vary from district to district and are developed by the neighborhood. “Certified” local historic districts have been determined to qualify for the National Register. These districts enjoy the same tax credit benefits as National Register districts.

Specific items to be utilized in identifying historic districts include:

- Buildings and structures within the district generally must be 50 years old.
- Many demolitions or new buildings have not altered its historic appearance.
- District resources should be similar in style, massing, detailing and/or date of construction.
- The buildings in the district must retain their original architectural character.
- The area must have clear and precise defined boundaries.

Available Services: Area is well served by utilities.

Street Access: S. 7th Street

Sur. Zones and Uses:

North – R-2
West – C-1 & R-3
South – R-2
East – C-2

ZONING REGULATIONS

- C-3 Purpose: The Regional Commerce Zone is designated for all residents in the region of Terre Haute, Indiana, and is not a limited community commerce area (or shopping center); consequently, it shall permit a wide variety of business, commerce, and services with some degree of limited warehousing for those establishments allowed in area. It shall be a major shopping center, definitely limited specific locations and characterized by large establishments generating large volumes of vehicular traffic. The development is characterized by its provision of some degree of comparison-shopping and a complete lack of any attempt to draw pedestrian traffic.
- C-3 Uses: Any use permitted in C-1, and C-2, Pet shops, Live professional entertainment and dancing, Schools, Auction rooms, Recreation establishments, Automobile sales and service (minor and major repairs) Farm equipment sales and service.
- C-3 Standards: Street setback of 50 feet from centerline; rear setback 11' from the rear property line; Interior 5' from the interior lot line, and meet the minimum parking requirement per table 4.
-

FINDINGS and RECOMMENDATION

Staff Findings:

The petitioners are requesting to rezone the property to C-3 to match the commercial use of the property. They have not stated what type of commercial use is intended, so it is unclear if it falls within the C-3 category.

There is an apartment on the second story. Section 10-207(g)(1)(A) states, "Dwelling units, lodging rooms, motels, and mobile home parks are not permitted in the C-3 Zone except as they may be permitted by the Planning Commission, with the approval of the Common Council, may vary the requirements of this Division in order to comply with the spirit and meaning as denned in Division I, Sec. 10-20, "Title, Intent, and Purpose." In all cases, the regional shopping center shall be submitted to the Planning Commission as a Planned Development. Therefore, it would be required for the property to be rezoned to C-3 Planned Development.. As stated by City Engineering, "determining the most appropriate designation for the property in its existing configuration is difficult for multiple reasons and creates a legitimate hardship.

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #1-23

Doc: #9

Date: February 2023

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There is no parking available and the structure does not meet the setbacks. Those could also be addressed as variances in a Planned Development. Otherwise, variances through the BZA will be necessary. The petitioner has filed for variances to be heard at the March, 2023, BZA meeting.

There are two entrances at the front of the building as well as the entrance to the apartment on Oak St. There is only one 911 address associated with the property. If there is a second business, there will need to be a second address as well as an address from Oak for the dwelling.

Recommendation:

Staff recommends the petition be tabled to amend the rezoning to C-3 Planned Development or another zoning deemed appropriate by City Engineering.



**CITY OF
TERRE HAUTE
ENGINEERING
DEPARTMENT**

City Hall
17 Harding Avenue, Room 200
Terre Haute, IN 47807
Phone: 812.244.4903
www.terrehaute.in.gov

MARCUS MAURER, P.E.
CITY ENGINEER

MEMORANDUM

TO: Sydney Shahar
Vigo County Area Planning Department

FROM: Caleb Williams
Staff Engineer

DATE: February 1, 2023

RE: **Amended Special Ordinance No. 1-2023**

As requested by Area Planning, the Department of Engineering has reviewed the request by YXION at 3207 N 167th Dr Goodyear, AZ for the following:

- Rezoning of 430 S. 7th Street from R2 Two-Family Residence District to C-3 Regional Commerce District for a proposed use of commercial building with second story apartment.

This property had been utilized as a mixed-used development in the past under the current classification, without complaints brought to the attention of the Department of Engineering.

Based on the proposed uses off-street parking would be required. Meeting this requirement would be difficult given the existing development of the site and neighborhood. A variance from the parking requirements would likely be the most practical approach to this issue.

Determining the most appropriate designation for the property in its existing configuration is difficult for multiple reasons which creates a legitimate hardship for the owners. The proposed mixed-use of the building would not be out of place given the abundance of residential and commercial uses along the 7th St corridor.