

APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE

SPECIAL ORDINANCE NO. 15, 2016

Common Address of lots to be rezoned: **5055 E. Hulman Drive, Terre Haute, Indiana**

Rezone From: **R-1 Planned Development**

Rezone To: **R-1 Planned Development**

Proposed Use: **Garage**

Name of Owner: **David Goss**

Address of Owner: **4750 Woodshire Drive, Terre Haute, IN 47803**

Phone Number of Owner: **c/o (812) 232-6003 Louis F. Britton**

Attorney Representing Owner: **Louis F. Britton**

Address of Attorney: **Cox, Zwerner, Gambill & Sullivan, LLP, 511 Wabash Avenue, Terre Haute, Indiana 47807**

Phone Number of Attorney: **(812) 232-6003**

for Information Contact: Owner Attorney

Council Sponsor: _____

FILED

JUN 09 2016

CITY CLERK

**AMENDED
SPECIAL ORDINANCE NO. 15, 2016**

An Ordinance amending Chapter 10, Article 2 of the Municipal Code designated as "Comprehensive Zoning Ordinance for Terre Haute, Indiana."

SECTION 1. BE IT ORDAINED 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:

That the following described real estate situated in the City of Terre Haute, County of Vigo, State of Indiana, to-wit:

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A

Commonly known as 5055 E. Hulman Drive, Terre Haute, Indiana, be and the same is hereby established as a Planned Development as designated in Division III Section 10-110 et seq. of said Comprehensive Zoning Ordinance for Terre Haute and the same is hereby declared to be an R-1 Planned Development District authorizing the use of said real estate for use for a one-family residence, one garage not exceeding 48x82 feet and one garage not exceeding 45x36 feet for storage and the storage and repair/maintenance of motor vehicles owned by the property owner, together with all rights, privileges, and provisions 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.

The Common Council further finds and determines that:

No variances from the development standards are required.

Petitioner has provided substantial evidence that the Planned Development will not adversely affect surrounding property values, public health and safety or the general public welfare and that a hardship exists justifying classification of the property as a Planned Development. Specifically, the Council finds that a hardship exists because outbuildings are permitted only as an accessory use in residential neighborhoods but no residence exists on the site. While zoned R-1, the character of the property is largely rural and the proposed development is consistent with the rural character of the area, but no residential zoning category exists for this sort of rural residential property. Permitting this use retains the residential zoning but allows for the rural nature of the property.

Approval of the designation of the property as a Planned Development does not nullify the purpose of the zoning regulations.

SECTION 2. 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 approval by the Mayor and publication as required by law.

PRESENTED BY COUNCILPERSON O. Earl Elliott
O. Earl Elliott

Passed in open Council this 9th day of June, 2016.

Todd Nation
Todd Nation, President

ATTEST: Charles Hanley, City Clerk
Charles Hanley

Presented by me to the Mayor this 9th day of June, 2016.


Charles Hanley
Charles Hanley, City Clerk

Approved by me, the Mayor, this 9th day of JUNE, 2016.

Duke Bennett
Duke Bennett, Mayor
City of Terre Haute

ATTEST: Charles Hanley, City Clerk
Charles Hanley, City Clerk

I prepared the foregoing instrument and 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.



Louis F. Britton

COX, ZWERNER, GAMBILL & SULLIVAN, LLP

511 Wabash Avenue, Terre Haute, IN 47807

Phone: (812) 232-6003

EXHIBIT A

A part of 24 acres off of the West end of 65 acres off of the North side of the Northeast quarter of Section 31, Township 12 North, Range 8 West, more particularly described as follows:

Seven and one half (7 ½) acres off of the East end of 24 acres off of the West end of 65 acres off of the North side of said Northeast quarter being a strip 293 feet more or less wide off of the East end of said 24 acres.

SUBJECT to pipe line easement granted Universal Gas Company by instrument dated September 28, 1929 and recorded October 6, 1931 in Miscellaneous Record 62 page 351.

EXCEPT that part conveyed to City of Terre Haute for the use of the Sanitary District of the City of Terre Haute, Indiana, for right of way as shown by instrument recorded July 17, 1975 in Miscellaneous Record 176 page 495-1. All records of the Recorder's Office, Vigo County, Indiana.

FILED

MAY 02 2016

CITY CLERK

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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.

The Common Council further finds and determines that:

No variances from the development standards are required.

Petitioner has provided substantial evidence that the Planned Development will not adversely affect surrounding property values, public health and safety or the general public welfare and that a hardship exists justifying classification of the property as a Planned Development.

Approval of the designation of the property as a Planned Development does not nullify the purpose of the zoning regulations.

SECTION 2. 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 approval by the Mayor and publication as required by law.

PRESENTED BY COUNCILPERSON _____
O. Earl Elliott

Passed in open Council this _____ day of _____, 2016.

Todd Nation, President

ATTEST: _____, City Clerk
Charles Hanley

Presented by me to the Mayor this _____ day of _____, 2016.

Charles Hanley, City Clerk

Approved by me, the Mayor, this _____ day of _____, 2016.

Duke Bennett, Mayor
City of Terre Haute

ATTEST: _____
Charles Hanley, City Clerk

I prepared the foregoing instrument and 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.



Louis F. Britton
COX, ZWERNER, GAMBILL & SULLIVAN, LLP
511 Wabash Avenue, Terre Haute, IN 47807
Phone: (812) 232-6003

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PETITION FOR REZONING OF REAL ESTATE

TO THE PRESIDENT AND MEMBERS
OF THE COMMON COUNCIL OF
THE CITY OF TERRE HAUTE,
VIGO COUNTY, INDIANA

Gentlemen:

David Goss, petitioner, is the owner of the following described real estate located in Vigo County, Indiana, to-wit:

LEGAL DESCRIPTION ATTACHED HERETO AND MARKED EXHIBIT A,

which real estate is commonly known as 5055 E. Hulman Drive, Terre Haute, Indiana.

The owner proposes to use the property for two garages, one not exceeding 48x82 feet and one not exceeding 45x36 feet for storage and the storage and minor maintenance/repair of motor vehicles owned by the owner of the real estate. Site plans are attached.

Petitioner is informed and believes that according to Chapter 10, Article 2, Division IV, Zoned Districts, Section 10.121 of the District Maps, "Comprehensive Zoning Ordinance for Terre Haute," and amendments thereto, the above described real estate is zoned R-1 Planned Development. Petitioner is further informed and believes that petitioner's proposed use would require said real estate to be rezoned to the classification as R-1, Planned Development District, under Section 10-110 et seq. of the Comprehensive Zoning Ordinance for Terre Haute.

Petitioner submits that this petition for a rezoning should be granted for the following reasons:

A. That the proposed uses would be beneficial to the local community and would generate employment for the community;

B. That said real estate is located near an area which is zoned for commerce and for similar planned development uses.

C. That said real estate is located on Hulman Street which provides adequate access;

D. That the use of said real estate as proposed will not significantly increase traffic or parking in the area, said real estate lends itself well to the proposed use; the proposed use does not alter the essential character of the locality and is not detrimental to public welfare or injurious to the property or improvements in the neighborhood;

E. Said rezoning will not increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the general area.

F. That hardships exist in that the property is zoned residential and the proposed use is permitted as an accessory to such use, but Petitioner has no current plans to construct a dwelling on the property. The property is not well suited to residential development.

WHEREFORE, petitioner respectfully requests the Area Plan Commission and the Common Council to favorably consider the passage of a Special Ordinance amending the Comprehensive Zoning Ordinance for Terre Haute, and declare the above-described real estate to be zoned R-1 – Planned Development – to permit use for a single family residence and two garages, one not exceeding 48x82 feet and one not exceeding 45x36 feet for storage and the storage and minor maintenance/repair of motor vehicles owned by the owner of the real estate,

being entitled to the rights and benefits that may inure to said real estate and the owners thereof by virtue of said description and the laws in such cases provided, subject to all limitations imposed by deed or otherwise.

IN WITNESS WHEREOF, the petitioner, David Goss, has duly executed this instrument this 29 day of April, 2016.



David Goss

This instrument prepared by Louis F. Britton, COX, ZWERNER, GAMBILL & SULLIVAN, LLP, 511 Wabash Avenue, Terre Haute, IN 47807; (812) 232-6003.

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PROPOSED
LOCATION OF
NEW STRUCTURE

55'

80'

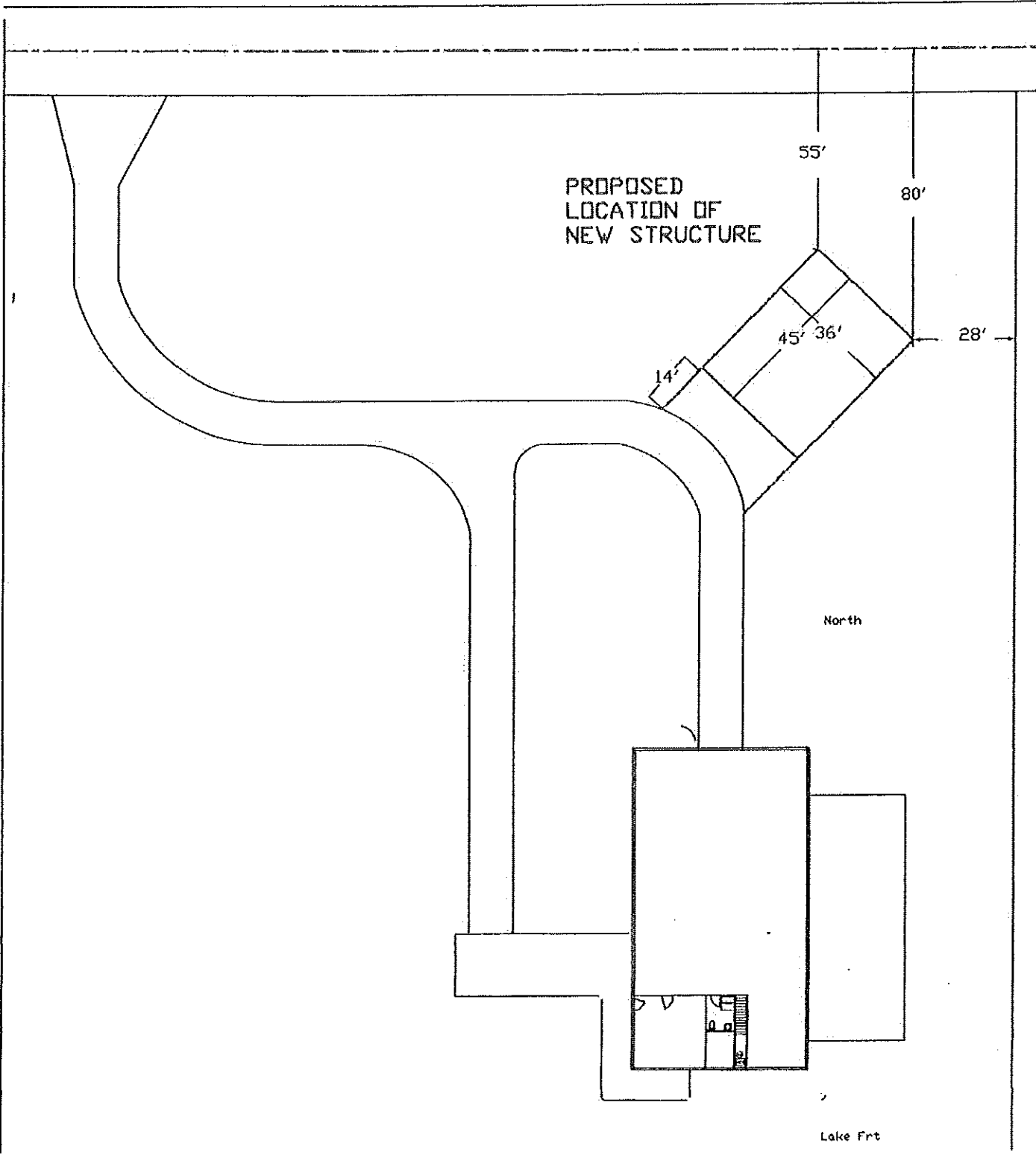
45' 36"

28'

14'

North


Lake Frt



AFFIDAVIT

COMES NOW affiant, David Goss, and affirms under penalty of law that he is the owner of record of the property located at 5055 E. Hulman Drive, Terre Haute, Indiana, for which a rezoning is requested and attached hereto a deed evidencing such ownership.

I affirm, under penalties for perjury, that the foregoing representations are true.

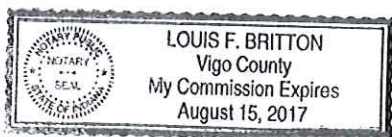


David Goss

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

Personally appeared before me, a Notary Public in and for said County and State, David Goss, who acknowledges the execution of the above and foregoing Affidavit, after being duly sworn upon his oath and after having read this Affidavit.

WITNESS my hand and Notarial Seal, this 29th day of April, 2016.





Notary Public

(Printed Name)

My Commission Expires:

My County of Residence:

This instrument prepared by Louis F. Britton, COX, ZWERNER, GAMBILL & SULLIVAN, LLP, 511 Wabash Avenue, Terre Haute, IN 47807; (812) 232-6003.

s:\users\clients\goss\dave goss rezoning 2016\rezoning documents\affidavit of owner of real estate.doc
4/29/2016

WARRANTY DEED

THIS INDENTURE WITNESSETH, THAT Noaman Botros and Carol Botros, Husband and Wife, of Vigo County, State of Indiana, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Convey and Warrant unto David A. Goss, of Vigo County, State of Indiana, the following described real estate located in the County of Vigo, State of Indiana, to-wit:

A part of 24 acres off of the West end of 65 acres off of the North side of the Northeast quarter of Section 31, Township 12 North, Range 8 West, more particularly described as follows:

Seven and one half (7 1/2) acres off of the East end of 24 acres off of the West end of 65 acres off of the North side of said Northeast quarter being a strip 293 feet more or less wide off of the East end of said 24 acres.

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

Subject to taxes prorated to the date hereof.

IN WITNESS WHEREOF the above referred to Noaman Botros and Carol Botros have hereunto set their hand and seal, this 15th day of February, 2005.

Noaman Botros (SEAL) Carol Botros (SEAL)
Noaman Botros Carol Botros

STATE OF Indiana COUNTY, SS: Vigo

Before me, the undersigned, a Notary Public in and for said county and state, this 15th day of February, 2005, personally appeared Noaman Botros and Carol Botros and acknowledged the execution of the annexed Deed to be their voluntary act and deed.

WITNESS my hand and Notarial Seal.

My Commission Expires: April 17, 2008
My County of residence is: Vigo

Marie Shanks
Notary Public
MARIE SHANKS
Typewritten or printed name of notary

THIS INSTRUMENT WAS PREPARED BY: Ronald E. Jumps, Ronald E. Jumps, Attorney, Cox, Zwermer, Gambill & Sullivan, LLP, 511 Wabash Avenue, Terre Haute, IN 47807. Note: In preparing this instrument, preparer makes no warranties, expressed or implied, regarding the title conveyed by it.

MAIL TAX STATEMENTS TO: 4750 Woodshire Drive, Terre Haute, In. 47803

\\Lawfirm\user\Walters\SHELLE\Real Estate\Vigo Wade\Chicago Title\Goss, David
2/4/2005
smw

DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer

FEB 17 2005

James W. Howell
VIGO COUNTY AUDITOR

Receipt

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

Date: 05/02/2016

Name: Law Offices of Cox, Twener, Garbille and Sullivan

Reason: Filing Fee for Rezoning

Re: David Goss

Cash: _____

Check: \$45.00 #96173

Credit: _____

Total: \$45.00

CHECK
CASH **PAID**

MAY 02 2016

TERRE HAUTE CITY CONTROLLER

Received By: *Reilly*



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 2, 2016

REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO
SPECIAL ORDINANCE NUMBER #15-16

CERTIFICATION DATE: June 1, 2016


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. 15-16. This Ordinance is a rezoning of the property located at 5055 E. Hulman Dr. The Petitioner, David Goss, petitions the Plan Commission to rezone said real estate from zoning classification R-1 to R-1 Planned Development District, for a garage. 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. 15-16 at a public meeting and hearing held Wednesday, June 1, 2016. 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. 15-16 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No.15-16 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.15-16 was FAVORABLE.


Fred L. Wilson, President


Jared Bayler, Interim Director

Received this 2nd day of June, 2016

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #15-16

Doc: # 46

Date: June 2016

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APPLICATION INFORMATION

Petitioner: David Goss

Property Owner: Same-As-Above

Representative: Louis F. Britton

Proposed Use: Garage

Proposed Zoning: R-1, Planned Development District

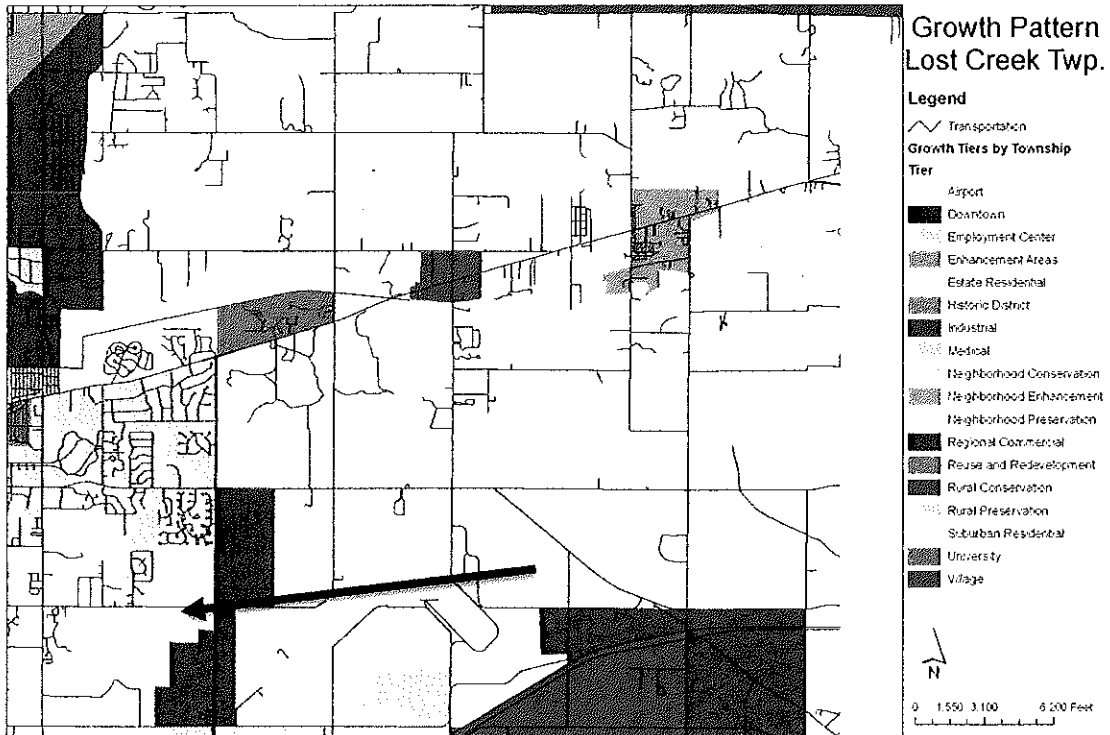
Current Zoning: R-1, Planned Development District

Location: The property is on E. Hulman Drive commencing approximately 1650 feet west of HWY 46 and containing approximately 300 feet of road frontage

Common Address: 5055 E. Hulman Dr, Terre Haute, IN 47803

COMPREHENSIVE PLAN GUIDANCE

Service Area: The City of Terre Haute/Lost Creek



Suburban Residential

These are largely undeveloped areas lying within the boundaries of existing and planned urban services. Current residential densities range from building on lots of ½ acre to 2 acres in size, this should be used as a minimum density. Over time, densities should be encouraged to increase moderately to allow average densities of three to three and one-half (3 to 3.5) households per acre. In the case of all residential densities, densities are stated as an average for the entire area in a given land use categories.

Promotion of monotonous suburban tract housing is not the intent of this growth pattern, although this may be an undesirable consequence. To avoid this outcome, careful consideration of alternative site development schemes should be undertaken by planning, engineering, development and real estate professionals for each new residential tract.

Increasing residential densities within this growth pattern offers four distinct advantages over typical low-density development.

- Optimization of the relationship between public infrastructure capacity and average development densities.
- Reduction in the need for infrastructure extensions and expansions, thereby saving public capital cost.
- Provides pedestrian scale residential neighborhoods, which will blend with existing Terre Haute neighborhoods that were developed at five to seven (5 to 7) units per acre and at the same time provide enhanced opportunities for non-motorized travel.
- Minimize land consumption and limits land disturbance.

Not every new subdivision will provide developed densities approaching four (4) units per acre, Yet, as cluster housing, patio homes, variations of zero-lot line housing and integrated neighborhoods of town houses, garden apartment, and single family dwelling units become more common and more fashionable, average densities will increase. Traditionally, allowable densities controlled mix and pattern of suburban residential development. Density, per se, is increasingly viewed by development professionals as only one of many variables that must be considered in making site development decisions. The infrastructure capacity relative to undeveloped areas and special environmental conditions of a specific development site, as well as, the site plan itself and its impact on surrounding property should primarily control the developed density. This should especially be the case as development moves beyond minimum residential densities. In all cases, density and the arrangement of uses on a developed site should be sensitive to surrounding development patterns, making land use transitions within the new development and utilizing natural features as transitions or buffers.

Policies for Suburban Residential areas should include:

- Houses on lots ranging from one-half to two acres depending on wastewater treatment needs.
- The extent of non-residential uses should be limited to parks, churches, and schools.

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #15-16

Doc: # 46

Date: June 2016

Page 3 of 5

- Residential subdivision lots should not have frontage on county roads, rather they should be required to build local level public streets to provide access from the county road to the lots.
- Medium range plans for expanding needed infrastructure should be developed, considering projected demand and funding.

Dev. Priority: There is a low development priority in this area.

ZONING COMPATIBILITY

Sur. Zones and Uses: **North** – R-1, Single Family Residence District

East – R-1, Single Family Residence District

South – R-3, Multi Family Residence District

West – R-1, Single Family Residence District

Character of Area: The petition property is located in a mostly residential setting with some agricultural uses.

ZONING REGULATIONS

b. Uses, Permitted - R-1 Single-Family Residence District.

- (1) One-family detached dwellings.
- (2) Cemeteries, including crematories and mausoleums in conjunction therewith if not located within four hundred feet (400') of any other property in a Residence District.
- (3) Churches, Rectories, and Parish Houses.
- (4) Convents and Monasteries.
- (5) Gardening, including nurseries, provided that no offensive odors or dust are created.
- (6) Golf Courses, but not including commercially-operated driving ranges or miniature golf courses, provided that no clubhouse shall be located within three hundred feet (300') of any other property in a Residence District.
- (7) Libraries, Public. (Ord. No. 1, 1967, § 1131.01 a. - b., 7-6-67)
- (8) Child Care.
- (9) Home Occupations. (Gen. Ord. No. 17, 2000, 9-14-00)

(A) UNLICENSED CHILD CARE.

An individual, or other entity, may provide child care in their residence for less than twenty-four (24) continuous hours to five (5) or fewer children at any time excluding relatives of the individual.

(B) LICENSED CHILD CARE.

An individual, or other entity, who is licensed by the Vigo County Department of Public Welfare and the State Department of Public Welfare may provide child care services for children under the age of fourteen (14). The caregiver may not exceed ten (10) children, including their own children, at any one time.

(C) Licensed or unlicensed child care centers shall not be permitted in residential districts that do not comply to Subsections (a) and (b) above.

(10) Parks and Playgrounds, publicly owned and operated.

(11) Schools, elementary and high, non-boarding and including playgrounds and athletic fields incidental thereto.

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: City code requires a primary or residential building prior to the construction of an accessory structure. The petitioner has been granted a Planned Development at this location to allow for the construction of a storage garage without a primary structure. This petition is in an attempt to amend the original Planned Development to allow for the construction of a second personal storage building. The petitioner already has on site a garage for personal storage. All uses for a Planned Development must be outlined at the ordinance. The new structure's use is to be a garage not exceeding 45x36 feet for storage and repair/maintenance of motor vehicles owned by the property owner.

Staff Comments:

1. OK
2. OK
3. Not needed
4. OK

Recommendation: Staff has a Favorable Recommendation for the R-1 PD with the following condition:

1. 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.