

**SPECIAL ORDINANCE NO. 16, 2010.**

**APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE**

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Common Address of lots to be rezoned:

303 South 7<sup>th</sup> Street, Terre Haute, IN 47807

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Rezone From: C-1 Neighborhood Commerce District

Rezone To: C-2 Limited Community Commercial District

Proposed Use: Restaurant

Name of Owner: Donald F. Garvin  
Richard E. Lidster  
Theodore J. Shanks

Address of Owner: 2245 N 9<sup>th</sup> Street  
Terre Haute, IN 47804

Phone Number of Owner: (812) 841-2681

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: Todd Nation

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COPY OF A SITE-PLAN MUST ACCOMPANY THIS APPLICATION

**FILED**

MAY 07 2010

**SPECIAL ORDINANCE NO. 16, 2010**

**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 Numbered 6 and 7 in Hite's Subdivision of Out Lot 56 in the Original Town now City of Terre Haute, otherwise described as follows: Beginning at the Northeast corner of said Lot 7; thence South with the East line of said Lot 7 to the intersection of the West line of Seventh Street with the North line of Swan Street, a distance of 134.6 feet; thence West with the North line of Swan Street, 154.6 feet to the West line of said Lot 6; thence North along said West line a distance of 188.42 feet to the Northwest corner of said Lot 6; in the South line of Poplar Street; thence Southeasterly along said South line of Poplar Street, 163.39 feet to the place of beginning.

Commonly known as 303 South 7<sup>th</sup> Street, Terre Haute, IN 47807.

be and the same is, hereby established as a C-2 Limited Community Commercial 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,

  
Todd Nation, Councilperson

Passed in open Council this 10 day of June, 2010.

  
Neil Garrison, President

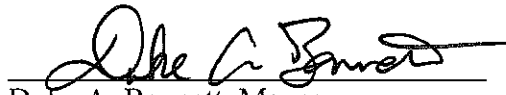
ATTEST:

  
Charles P. Hanley, City Clerk

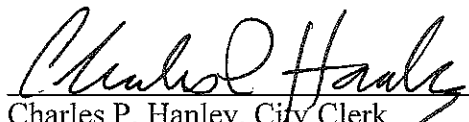
Presented by me, to the Mayor of the City of Terre Haute, this 11<sup>th</sup> day of June, 2010.

  
Charles P. Hanley, City Clerk

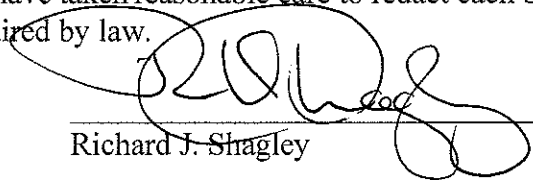
Approved by me, the Mayor of the City of Terre Haute, this 11<sup>th</sup> day of JUNE, 2010.

  
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 Petitioners, Donald F. Garven, Richard E. Lidster, and Theodore J. Shanks, 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 Numbered 6 and 7 in Hite's Subdivision of Out Lot 56 in the Original Town now City of Terre Haute, otherwise described as follows: Beginning at the Northeast corner of said Lot 7; thence South with the East line of said Lot 7 to the intersection of the West line of Seventh Street with the North line of Swan Street, a distance of 134.6 feet; thence West with the North line of Swan Street, 154.6 feet to the West line of said Lot 6; thence North along said West line a distance of 188.42 feet to the Northwest corner of said Lot 6; in the South line of Poplar Street; thence Southeasterly along said South line of Poplar Street, 163.39 feet to the place of beginning.

Commonly known as 303 South 7<sup>th</sup> Street, Terre Haute, IN 47807.

Your 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 C-1 Neighborhood Commercial District.

Your Petitioners would respectfully state that the real estate is now vacant, having formally been used for Chicago's Pizza and an ice cream store. Your Petitioners intend to sell the real estate and the purchasers intend to use as a restaurant.

Your Petitioners would request that the real estate described herein shall be zoned as a C-2 Limited Community Commercial District to allow for the use as proposed by the Purchasers. Your Petitioners would allege that the C-2 Limited Community Commercial District would not alter the general characteristics of this neighborhood, since the real estate is a commercial property at the major intersection of Seventh Street and Poplar Street.

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 area since this is a commercial property.

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 Limited Community Commercial 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 owners thereof by virtue of the new designation subject to all limitations imposed by deed or otherwise.

IN WITNESS WHEREOF, the undersigned Petitioners have caused this Petition to Rezone Real Property to be executed this 7<sup>th</sup> day of May, 2010.

**PETITIONERS:**

Donald F. Garvin  
Theodore J. Shanks  
Richard E. Lidster

By:   
Richard E. Lidster

WRIGHT, SHAGLEY & LOWERY, P.C.  
500 Ohio Street  
Terre Haute, IN 47807  
Phone: (812) 232-3388

BY: 

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

The owner and mailing address: 2245 N 9<sup>th</sup> Street, Terre Haute, IN 47804.

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

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF VIGO        )

**AFFIDAVIT**

Comes now, Richard E. Lidster, being duly sworn upon her oath, deposes and says:

1. That Richard E. Lidster, Donald F. Garvin and Theodore J. 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 Numbered 6 and 7 in Hite's Subdivision of Out Lot 56 in the Original Town now City of Terre Haute, otherwise described as follows: Beginning at the Northeast corner of said Lot 7; thence South with the East line of said Lot 7 to the intersection of the West line of Seventh Street with the North line of Swan Street, a distance of 134.6 feet; thence West with the North line of Swan Street, 154.6 feet to the West line of said Lot 6; thence North along said West line a distance of 188.42 feet to the Northwest corner of said Lot 6; in the South line of Poplar Street; thence Southeasterly along said South line of Poplar Street, 163.39 feet to the place of beginning.

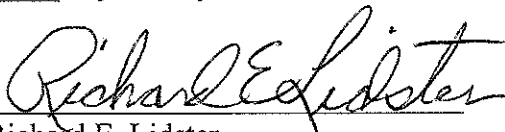
Commonly known as 303 South 7<sup>th</sup> Street, Terre Haute, IN 47807.

2. That a copy of the Warranty Deed, dated August 31, 1983, and recorded in the records of the Recorder's Office of Vigo County, Indiana, transferring fee simple title to Affiant, 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 Richard E. Lidster, and Donald F. Garvin and Theodore J. Shanks 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 Richard E. Lidster, Donald F. Garvin and Theodore J. Shanks.

4. Further, Affiant saith not.

Dated at Terre Haute, Indiana this 7<sup>th</sup> day of May, 2010.

  
Richard E. Lidster



88-239 8063

LIMITED WARRANTY DEED

741

THIS IS A DEED dated August 31, 1983, by SHELL OIL COMPANY, a Delaware corporation with offices at 8500 North Michigan Road in Indianapolis, Indiana 46268, (herein called "Grantor") to DONALD F. GARVIN, RICHARD E. LIDSTER, AND THEODORE J. SHANKS of 2331-So. 7th Street, Terre Haute, Indiana 47802 (herein called "Grantee", whether one or more):

GRANTOR, for good and valuable consideration received, hereby grants and conveys to Grantee the following described Premises situated in Terre Haute, County of Vigo, State of Indiana:

Lots Numbered 6 and 7 in Hite's Subdivision of Out Lot 56 in the Original Town now City of Terre Haute, otherwise described as follows: Beginning at the Northeast corner of said Lot 7; thence South with the East line of said Lot 7 to the intersection of the West line of Seventh Street with the North line of Swan Street, a distance of 134.6 feet; thence West with the North line of Swan Street, 154.6 feet to the West line of said Lot 6; thence North along said West line a distance of 188.42 feet to the Northwest corner of said Lot 6; in the South line of Poplar Street; thence Southeasterly along said South line of Poplar Street, 163.39 feet to the place of beginning:

together with all rights, privileges and appurtenances thereto and all buildings and land improvements thereon; but subject to all easements, rights-of-way; reservations, restrictions and encumbrances of record, to any existing tenancies, to all zoning laws and ordinances, and to any state of facts an accurate survey or inspection of the premises would show;

TO HAVE AND TO HOLD the same unto Grantee and Grantee's heirs, successors and assigns forever.

SUBJECT to the foregoing and to the liens of all taxes and assessments for the year 1983 and subsequent years, Grantor covenants with Grantee that Grantor will warrant and defend the title to the premises against the lawful claims of all persons claiming by, through or under Grantor.

EXECUTED by Grantor as of the date first herein specified.

WITNESSES:

SHELL OIL COMPANY

By

*T. L. CLEMENTS*

T. L. CLEMENTS  
MANAGER, CORPORATE REAL ESTATE  
ADMINISTRATIVE SERVICES

ATTEST:

*Kim Jensen Clifford*  
KIM JENSEN CLIFFORD ASSISTANT SECRETARY



*R. C. Winterhoff*  
R. C. WINTERHOFF  
*J. V. Harvey*  
J. V. HARVEY

STATE OF TEXAS )  
                          ) SS:  
COUNTY OF HARRIS )

Before me L. C. JONES a Notary Public, this 31st day

of August, 1983, personally appeared SHELL OIL COMPANY by

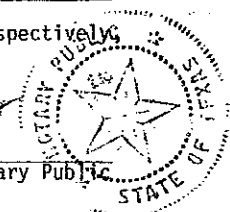
T. L. CLEMENTS and KIM JENSEN CLIFFORD

its MANAGER, CORPORATE REAL ESTATE and Assistant Secretary respectively  
ADMINISTRATIVE SERVICES

and acknowledged the execution of the foregoing instrument.

My commission expires: \_\_\_\_\_

*L. C. Jones*  
L. C. JONES Notary Public  
Notary Public in and for the State of Texas  
My Commission Expires November 30 1984



This Instrument was prepared under the supervision of  
W. J. PUMER, a representative of Shell Oil Company  
8500 North Michigan Road, Indianapolis, Indiana

RECEIVED FOR RECORD THE 30 DAY OF Sept 1983 AT 3 O'CLOCK PM  
RECORD 394 PAGE 741 WILLIAM BRAMBLE, RECORDER

COPIES ENTERED FOR RECORD  
Sept 30 1983  
*Wm Paul Hunter*

INDIANA GRANTS INCOME TAX ON SALES OF REAL ESTATE  
Paid by *Shell Oil Co.*  
Date 9/30/83  
Amount Paid \$ 2,444.48  
Taxes Receipt # 252602  
Vigo County



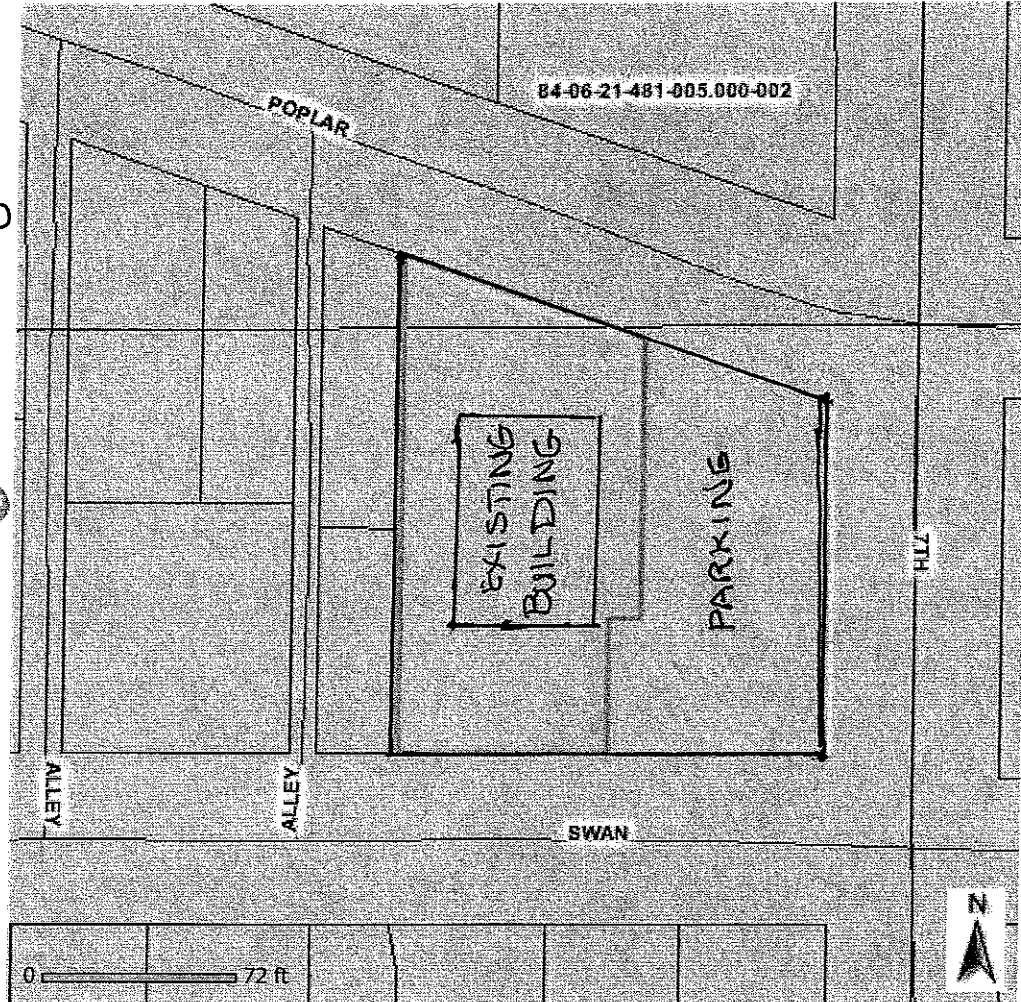
# SITE PLAN

Map

S.O. 16, 2010

C-1 to C-2

Commercial building (existing)



### Summary

<b>Parcel ID</b>	84-06-28-229-019.000-002	<b>Alternate ID</b>	N/A	<b>Owner Name</b>	GARVIN DONALD F & RICHARD E LIDSTER & TR
<b>Sec/Twp/Rng</b>		<b>Class</b>	Com Parking lot or structure	<b>Owner Address</b>	GARVIN DONALD F & RICHARD E LIDSTER & TR
<b>Property Address</b>	303 S 7TH ST TERRE HAUTE	<b>Acreage</b>	0.00		3655 W 14 1/2 ST TERRE HAUTE, IN 47802
<b>District</b>	002 HARRISON				
<b>Brief Tax Description</b>	HITES SUB OF OL 56 PRT 7 28-12-9 .000 AC LOTS 6-7 (Note: Not to be used on legal documents)				

Last Data Upload: 5/4/2010 1:12:39 AM



TERRE HAUTE

# 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 3, 2010

## REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO  
SPECIAL ORDINANCE NUMBER #16-10

CERTIFICATION DATE: June 2, 2010


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

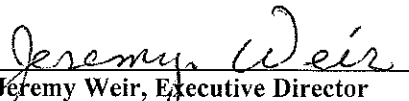
Dear Members,

The Vigo County Area Plan Commission offers you the following report and certification on Special Ordinance No. 16-10. This Ordinance is a rezoning of the property located at 303 South 7<sup>th</sup> Street. The Petitioner, Donald Garvin, Richard Lidster and Theodore Shanks, Petitions the Plan Commission to rezone said real estate from zoning classification C-1 to C-2, Community Commerce District, for a restaurant. 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. 16-10 at a public meeting and hearing held Wednesday, June 2, 2010. 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. 16-10 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No. 16-10 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. 16-10, was FAVORABLE.

  
Fred L. Wilson, President

  
Jeremy Weir, Executive Director

Received this 3<sup>rd</sup> day of June, 2010

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #16-10

Doc: # 44

Date: June 2010

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## APPLICATION INFORMATION

Petitioner: Donald F. Garvin, Richard E. Lidster, Theodore J. Shanks

Property Owner: Same-As-Above

Representative: Richard J. Shagley

Proposed Use: Restaurant

Proposed Zoning: C-2, Limited Community Commercial District

Current Zoning: C-1, Neighborhood Commerce District

Location: SW corner of the S 7<sup>th</sup> and Poplar Street

Common Address: 303 South 7<sup>th</sup> Street, Terre Haute, IN 47807

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## COMPREHENSIVE PLAN GUIDANCE

Service Area: The City of Terre Haute

Guiding Policies: Historic District

- Buildings and structures within the district generally must be 50 years old.
- Many demolitions or new building have not altered it historic appearance.
- District resource 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 clearly defined boundaries

Available Services: Area is well served by utilities.

Soil Limitations: Not studied.

Street Access: S 7<sup>th</sup> Street is a Secondary Collector and Poplar St is a Secondary Arterial

Dev. Priority: This area has a high priority for Capital investment, infill development, and neighborhood renewal



STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #16-10

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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 for a Restaurant  
                              Eight (8) spaces per one thousand (1,000) Sq. Ft. of gross floor  
                              area, plus one space per five (5) customer seats outside the  
                              principal structure.

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## **FINDINGS and RECOMMENDATION**

Staff Findings:        The proposed use will be consistent with the current improvement on the lot. This location was used for the Chicago Pizza Restaurant. The owners of property have requested a change in zoning to match the current and future intensity uses at this property.

Recommendation:    Staff has a Favorable Recommendation for a C-2, Community Commerce District.