



City of Bloomington Common Council

Legislative Packet

Regular Session
followed by
Committee of the Whole Discussion

18 July 2007

Office of the Common Council
P.O. Box 100
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**City of
Bloomington
Indiana**



City Hall
401 N. Morton St.
Post Office Box 100
Bloomington, Indiana 47402

Office of the Common Council
(812) 349-3409
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To: Council Members
From: Council Office
Re: Weekly Packet Memo
Date: July 13, 2007

Packet Related Material

Memo

Agenda

Calendar

Notices and Agendas:

None

Legislation for Final Action:

- **Ord 07-13** To Amend the Bloomington Zoning Maps from RE to Planned Unit Development (PUD) and to Amend the Preliminary Plan for the Meadowood/Jill's House PUD - Re: 800 E. Tamarack Trail (Meadowood Retirement Community)

Contact: Pat Shay at 349-3524 or shayp@bloomington.in.gov

Please see the Legislative Packet issued for the [11 July 2007](#) Committee of the Whole for legislation, summary, and background material.

Legislation and Background Material for First Reading:

- **Ord 07-15** To Amend Title 8 of the Bloomington Municipal Code, Entitled "Historic Preservation and Protection" to Establish A Historic District - Re: 2102 West Vernal Pike (Vivian Galligan, John Galligan Jr. and John Galligan III, Petitioners)
 - Map of Designation; Report prepared by Nancy Hiestand, Program Manager; Photos; Letter from Tommy Kleckner, Director, Western Regional Office, Historic Landmark Foundation of Indiana; Application*Contact: Nancy Hiestand at 349-3507 or hiestann@bloomington.in.gov*
- **Ord 07-16** To Amend Title 14 of the Bloomington Municipal Code, Entitled "Peace and Safety" (Providing a Comprehensive Revision of Chapter 14.09, entitled "Noise Control")
 - Memo from Margie Rice, Assistant City Attorney; Annotated Changes to BMC 14.09 (Noise Control)*Contact: Margie Rice at 349-3555 or ricem@bloomington.in.gov*

Minutes from Regular Session:

None

Memo

**Two Meetings on July 18th
With One Ordinance Ready for Final Action at the Regular Session and
Two Ordinances Ready for Introduction at the Regular Session and
Discussion at the Committee of the Whole**

The Council is approaching the last legislative cycle before the August Recess, which will entail a Regular Session immediately followed by a Committee of the Whole on July 18th, a week of departmental budget hearings running from July 23rd through 26th, and a Regular Session on August 1st.

There is one ordinance ready for final action at the Regular Session next Wednesday, which can be found in the 11 July 2007 Legislative Packet and two ordinances ready for introduction at that Regular Session and discussion at the Committee of the Whole immediately following it. Those ordinances are then scheduled for final action on Wednesday, August 1st and can be found, along with the background material, in this packet.

Two Items for First Reading and Discussion on Wednesday July 18th

Item One- Ord 07-15 - Amending Title 8 (Historic Preservation and Protection) in Order to Designate 2102 West Vernal Pike as a Historic District

Ord 07-15 amends Title 8 of the BMC by establishing 2102 West Vernal Pike as a historic district at the request of the property owners who are seeking a historic adaptive reuse approval as a conditional use under the Unified Development Ordinance.

Historic Preservation Ordinances

Before describing this district, the next few paragraphs provide a brief overview of the Title 8 regarding Historic Preservation and Protection. The provisions of that title conform to State law (I.C. 36-7-11 et seq.) and are intended to protect historic and architecturally-worthy properties that either impart a distinct aesthetic quality to the City or serve as visible reminders of our historic heritage. These provisions are intended to:

- ensure the harmonious and orderly growth and development of the City;
- maintain established, but endangered, neighborhoods;
- enhance property values and attract new residents; and
- ensure the viability of the traditional downtown area and to enhance tourism.

The Historic Preservation Commission is authorized to make recommendations to the Council regarding the establishment of historic districts. It also promulgates rules and procedures for reviewing changes to the external appearance of these properties which takes the form of either granting or denying certificates of appropriateness for the proposed changes.

The code provides for various levels of historic designations, areas, and ratings which largely correspond to various levels of protection. There are two forms of designations. The first form is the Conservation District, which is a less restrictive (and often interim form of) designation (initially for three years), and the second is the full historic district. Within each district, properties may be divided into the more regulated primary or less regulated secondary areas. Each property within a district may be rated as either outstanding, notable, contributing, or noncontributing, according to its significance.

According to the BMC, the Historic Preservation Commission must hold a public hearing and submit a map and Report to the Council. The map identifies the district and the Report explains the designation in terms of the criteria set forth in the ordinance. The criteria address the historic or architectural importance of the property.

Although not relevant to the present petition, the Commission may impose interim protection on the district that remains in effect until the Council acts on the designation and protects the property from exterior alteration. It may also recommend historic designation of properties listed on the Bloomington Survey of Historic Sites and Structures which are slated for demolition.

2102 West Vernal Pike – Petitioner Investment and Intentions

The Petitioners (Vivian Galligan, John Galligan Jr. and John Galligan III) purchased this late Victorian Queen Anne farmhouse from Bloomington Restoration Inc. (BRI) in 2004 who, in turn, had purchased it with the help of a loan from Historic Landmarks Foundation of Indiana in order to protect it from further neglect. (See their letter in support of this designation in this packet.) The property had been zoned Limited Commercial (CL) at the time the Petitioners purchased it, but was rezoned

residential as part of the comprehensive rezoning the City performed earlier this year in conjunction with the adoption of the Unified Development Ordinance. The Petitioners now have restored the property in accordance with the Secretary of Interior's Standards at considerable expense and have filed for conditional use approval with Board of Zoning Appeals for a historic adaptive reuse in order to reinstate the commercial uses and waive site requirements regarding the paving of the drive and parking area and the installation of a sidewalk. At this point, it appears that Planning staff will be amenable to a compromise on the paving of the parking lot, but will recommend installation of the sidewalk.

Historic Criteria

The Report associates this farmhouse with the small community of Hensonburg, which straddled Vernal Pike just west of the current SR 37 starting sometime in the 1890's. The Hensonburg grade school (constructed in 1916 and rebuilt after a fire in 1930) anchored this community and a subsequent meatpacking plant and quarry "provided enough employment to keep the community viable." This farmhouse was built between 1890 and 1900 by John and Anna Buzzard. By 1918, the records indicate that the house was owned by the Cirgin family, who operated a grocery store nearby from 1929 to 1971. Remnants of this community still remain with the rebuilt Hensonburg school building, the old grocery store, and two houses nearby.

For these reasons, the Commission found that the property:

- has significant value as part of the heritage of the City and is associated with persons who played a significant role in local history; and
- exemplifies our cultural, economic and social heritage.

Architectural Criteria

This Queen Anne style house is enclosed by a unique mortared, fieldstone wall and sits on about a half acre of land under a mature canopy of trees. It is a familiar sight to motorists traveling along Vernal Pike and is now hemmed in by industrial buildings on the north and south. There is a driveway and parking area to the south and addition and shed at the rear of the building. The Report notes that the "house has very good integrity, in structure as well as in its setting" with a "basic T-plan ... shaped by intersecting principal gables" and a "wrap around porch which may have been replaced at one point." The "distinctly Queen Anne details include the shaped shingling beneath the gables and in a course around the middle of the house" and the capped window lintels. The doors and interior details are done in an "Eastlake" style.

With this in mind, the Commission found that the property:

- embodies distinctive characteristics of architectural or engineering type;
- contains architectural features that are endanger of being lost;
- represents an established and familiar visual feature of the neighborhood of the City; and
- exemplifies the distinctive architectural style of the built environment of a particular era of the community's history.

Rating of Property

At its meeting on July 12, 2007, the Commission approved this designation by a vote of 6 – 0 – 0 and rated the structure as “notable.”

Item Two – Ord 07-16 – Offering a Comprehensive Amendment of Chapter 14.09 of the BMC Entitled “Noise Control”

Ord 07-16 proposes a comprehensive revision of Chapter 14.09 of the Bloomington Municipal Code entitled “Noise Control,” which is intended to make the ordinance easier to understand and enforce. The following summary is derived from the memo and annotated changes provided by Margie Rice, Assistant City Attorney/Risk Manager. In broad overview, the ordinance:

- drops a difficult-to-enforce set of sound pressure standards and introduces a “reasonableness” standard that comports with established State caselaw;
- consolidates the prohibited noises into one provision (rather than two) and specifically addresses current concerns about noise from moving vehicles;
- modifies existing exemptions and adds new ones which are “common, necessary, or specifically allowed by law;”
- narrows the list of circumstances warranting a special permit without significantly changing current practices; and
- imposes escalating fines of \$50, \$100 & \$500 rather than the existing \$50 fine and directs appeals to the Board of Public Works.

BMC 14.09.030 – Prohibitions (Ord. Sections 3 – 5 & 8)

The ordinance eliminates the existing, unwieldy regime of enforcing limits on sound pressure levels (decibels), which were tied to the source of sound (fixed versus non-stationary), land use (residential, business, and manufacturing) and time of day (day or night). This required trained designees to properly calibrate and use special sound

pressure level meters to measure sound at prescribed distances and has not been done in years. Along with eliminating this method of establishing allowable noise limits, the ordinance also dispenses with the requirement that the Environmental Commission periodically review the Chapter.

In place of this approach, the ordinance prohibits “unreasonable noise,” which is defined as any sound that *adversely affects the wellbeing (paraphrase)* of a “reasonable person with ordinary sensitivities given the time of day or environment in which the sound is made.” This reference to a “reasonable person with ordinary sensitivities” has been held to provide adequate notice to persons about what they can and cannot do, and will be much easier to enforce than taking readings from a meter. Along with this general prohibition, the ordinance also either introduces or modifies existing prohibitions against:

- operating a motor vehicle without a muffler or baffle that prevents unreasonable noise;
- sounding a horn or signaling device for an unreasonable period of time (unless done so in order to warn others);
- operating of sound-producing or reproducing devices:
 - *in a vehicle* louder than necessary for the convenient hearing of persons inside the vehicle within which the device is emanating. (Note: A sound that is clearly audible 30 feet or more from the vehicle is sufficient evidence of a violation of this section.); or
 - *on a premises* continuously or intermittently for a period of at least 15 minutes and the sound can be heard outside of the immediate premises of the emitter by a person of normal hearing. (Note: Such sounds heard outside the premises between the hours of 9:00 p.m. and 7:00 a.m. are sufficient evidence of a violation of this section. Also, please note that a “premises” is defined as a place where a person has a legal, private occupancy.)

BMC 14.09.060 – Exemptions (Ord. Section 6)

The ordinance keeps nine existing exemptions (with a few modifications) and adds five new ones for activities the memo calls “common, necessary or specifically allowed by law.” The existing exemptions relate to noises from:

- non-amplified crowd noises occurring between 6:00 a.m. and 10:00 p.m.;
- construction operations occurring between 6:00 a.m. and 10:00 p.m. (Please note that this section was modified to change the starting time to 6:00 a.m. rather than at sunrise. Please also note that these hours do not apply to sounds

from pile drivers, steam shovels, pneumatic hammers, and certain powered hoists which must be operated between 7:00 a.m. and 8:00 p.m.);

- safety signals, police and fire vehicles, and emergency work;
- church bells when rung as part of a religious observance and persons with permits to use the streets;
- trains and aircraft, and
- activities of a temporary duration permitted by the City under this chapter.

The new exemptions relate to noises from:

- burglar alarms and other warning devices that are properly installed and investigated and turned off within a reasonable period of time;
- the collection of rubbish between 5:00 a.m. and 10:00 p.m.;
- equipment or animals lawfully used by persons with disabilities to accommodate their conditions; and
- Legal consumer fireworks during hours protected by state law which includes:
 - 5:00 p.m. to two hours after sunset on June 29 – July 9;
 - 10:00 a.m. to midnight on July 4; and
 - 10:00 a.m. on December 31 and 1: 00 a.m. on January 1.

BMC 14.09.050 – Special Permits (Ord. Section 7)

The ordinance continues to authorize the Mayor or his/her designee to grant special permits. The application and permit must be submitted in writing to the Mayor's Office and the permit must contain all the underlying conditions and "may prescribe any reasonable requirements deemed necessary to minimize the adverse effects upon the community or the surroundings." This latter phrase made way for the deletion of provisions that specifically dealt with emergency, temporary, and civic event permits.

BMC 14.09.060 – Enforcement (Ord. Section 9)

The ordinance continues to authorize the Mayor, his/her duly authorized representative, police officers, and civil servants appointed with the approval of the Council to enforce this chapter. These persons may issue orders and notices of violations and must "keep complete and accurate records." However, only police officers may stop moving vehicles in the course of enforcing this chapter.

BMC 14.09.070 – Violations, penalties, and appeals (Ord. Section 10)

The ordinance changes the violations, penalty, and appeals section by introducing escalating fines and directing the Board of Public Works to hear appeals. In brief, this section provides for:

- the issuance of a warning, which gives the violator one opportunity to comply with the provisions of this chapter;
- the imposition of a fine of \$50 upon the issuance of a notice of violation and a fine of \$100 upon the issuance of a second notice of violation within 12 months;
- the imposition of a fine of \$500 upon the issuance of a third notice of violation within 12 months and an order to cease operating the noise creating device until the offending noise is brought into compliance with this chapter where the notice was issued to the same person for the same offense;
- the payment of fines within seven days to the City of Bloomington (rather than to the Controller's Office) unless the notice of violation is appealed;
- the filing of a written appeal with the Board of Public Works (rather than a special appeal board) and the filing of appeal of the Board's decision with the Circuit Court within seven days; and
- the enforcement of the notice of violation or orders of the Board of Public Works by the Legal Department.

Happy Birthday Mike Diekhoff!!

**NOTICE AND AGENDA FOR
BLOOMINGTON COMMON COUNCIL
REGULAR SESSION & COMMITTEE OF THE WHOLE
7:30 P.M., WEDNESDAY, JULY 18, 2007
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 NORTH MORTON**

REGULAR SESSION

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR: None

IV. REPORTS FROM:

- 1. Councilmembers**
- 2. The Mayor and City Offices**
- 3. Council Committees**
- 4. Public**

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR SECOND READING AND RESOLUTIONS

1. Ordinance 07-13 To Amend the Bloomington Zoning Maps From RE To Planned Unit Development (PUD) and to Amend The Preliminary Plan for the Meadowood/Jill's House PUD – Re: 800 E. Tamarack Trail (Meadowood Retirement Community)

Committee Recommendation: Do Pass 8 – 1 – 0

VII. LEGISLATION FOR FIRST READING

1. Ordinance 07-15 To Amend Title 8 of the Bloomington Municipal Code, Entitled “Historic Preservation and Protection” to Establish a Historic District – Re: 2102 West Vernal Pike (Vivian Galligan, John Galligan Jr. and John Galligan III, Petitioners)
2. Ordinance 07-16 To Amend Title 14 of the Bloomington Municipal Code, Entitled “Peace and Safety” (Providing a Comprehensive Revision of Chapter 14.09, entitled “Noise Control”)

VIII. PRIVILEGE OF THE FLOOR

IX. ADJOURNMENT

(and immediately reconvene for)

COMMITTEE OF THE WHOLE

Chair: Chris Sturbaum

1. Ordinance 07-15 To Amend Title 8 of the Bloomington Municipal Code, Entitled “Historic Preservation and Protection” to Establish a Historic District – Re: 2102 West Vernal Pike (Vivian Galligan, John Galligan Jr. and John Galligan III, Petitioners)

Asked to Attend: Nancy Hiestand, Housing Coordinator
Representative of Petitioners

2. Ordinance 07-16 To Amend Title 14 of the Bloomington Municipal Code, Entitled “Peace and Safety” (Providing a Comprehensive Revision of Chapter 14.09, entitled “Noise Control”)

Asked to Attend: Margie Rice, Risk Manager/Assistant City Attorney

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Office of the Common Council
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To: Council Members
From: Council Office
Re: Calendar for the Week of July 16-21, 2007

Monday, July 16, 2007

4:00 pm Council for Community Accessibility, McCloskey
5:00 pm Farmers' Market Advisory Council, Parks and Recreation, Showers Building Room 250
5:30 pm Bicycle & Pedestrian Safety Commission, Hooker Room
5:30 pm Plan Commission Special Hearing, Council Chambers
6:30 pm *Home Construction and Remodeling for Energy Efficiency* – Building Science Seminar presented by Bob Geswein, Rogers Room, Bloomington Convention Center, 302 S. College Ave.

Tuesday, July 17, 2007

11:00 am Bloomington Multicultural Festival Planning Committee, Hooker Room
4:00 pm Community & Family Resources Commission, Hooker Room
4:00 pm Board of Public Safety, McCloskey
4:00 pm Diversity Film Festival Planning Committee, Dunlap
5:30 pm Animal Control Commission, McCloskey
6:30 pm Bloomington-Posoltega Sister Cities Committee, Hooker Room
7:30 pm Bloomington Sister Cities Inc. Committee, Hooker Room

Happy Birthday Mike Diekhoff, Councilmember, District III!

Wednesday, July 18, 2007

9:30 am Tree Commission, Henderson Shelter, Bryan Park, 1001 S. Henderson St.
3:00 pm Family Shelter Meeting, Hooker Room
4:00 pm Martin Luther King Jr., Birthday Commission, Hooker Room/McCloskey
7:00 pm Council of Neighborhood Associations, Hooker Room
7:30 pm Common Council Regular Session *immediately followed by* Committee of the Whole, Council Chambers

Thursday, July 19, 2007

5:30 pm Board of Zoning Appeals, Council Chambers
7:00 pm Environmental Commission, McCloskey

Friday, July 20, 2007

12:00 pm Domestic Violence Taskforce, Hooker Room
6:00 pm *Be Playful Bloomington: A Sampler of the Arts* – a free, family-oriented event featuring music, art, craft activities and more – John Waldron Arts Center, 122 S Walnut St.

Saturday, July 21, 2007

8:00 am Bloomington Community Farmers' Market, Showers Common

ORDINANCE 07-15

**TO AMEND TITLE 8 OF THE BLOOMINGTON MUNICIPAL CODE, ENTITLED
“HISTORIC PRESERVATION AND PROTECTION”
TO ESTABLISH A HISTORIC DISTRICT
- Re: 2102 West Vernal Pike
(Vivian Galligan, John Galligan Jr. and John Galligan III, Petitioners)**

WHEREAS, the Common Council adopted Ordinance 95-20 which created a Historic Preservation Commission and established procedures for designating historic districts in the City of Bloomington; and

WHEREAS, the Historic Preservation Commission held a public hearing on July 12, 2007 for the purpose of allowing discussion and public comment on the proposed historic district designation of 2102 West Vernal Pike; and

WHEREAS, at the July 12, 2007 meeting the Historic Preservation Commission found that the building has historic and architectural significance that merits the protection of the property as a historic district; and

WHEREAS, the Commission has prepared a map and written report which accompanies the map and validates the proposed district by addressing the criteria outlined in BMC 8.08.10; and

WHEREAS, the Commission voted to submit the map and report to the Common Council which recommend local historic designation of said properties;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA. THAT:

SECTION I. The map setting forth the proposed historic district for the site is hereby approved by the Common Council, and said historic district is hereby established. A copy of the map and report submitted by the Historic Preservation Commission are attached to this ordinance and incorporated herein by reference and two copies of them are on file in the Office of the Clerk for public inspection. The property is located at 2102 West Vernal Pike and is further described below:

Pt S End NW 32-8-1W.54A

SECTION II. The “2102 West Vernal Pike” shall be classified as “notable.”

SECTION III. Chapter 8.20 of the Bloomington Municipal Code, entitled “List of Designated Historic Districts,” is hereby amended to insert a line regarding the “2102 West Vernal Pike” which shall read as follows:

2102 West Vernal Pike

SECTION IV. If any section, sentence, or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION V. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this ____ day of _____, 2007.

DAVE ROLLO, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to Mayor of the City of Bloomington, Monroe County, Indiana, upon this ____ day of _____, 2007

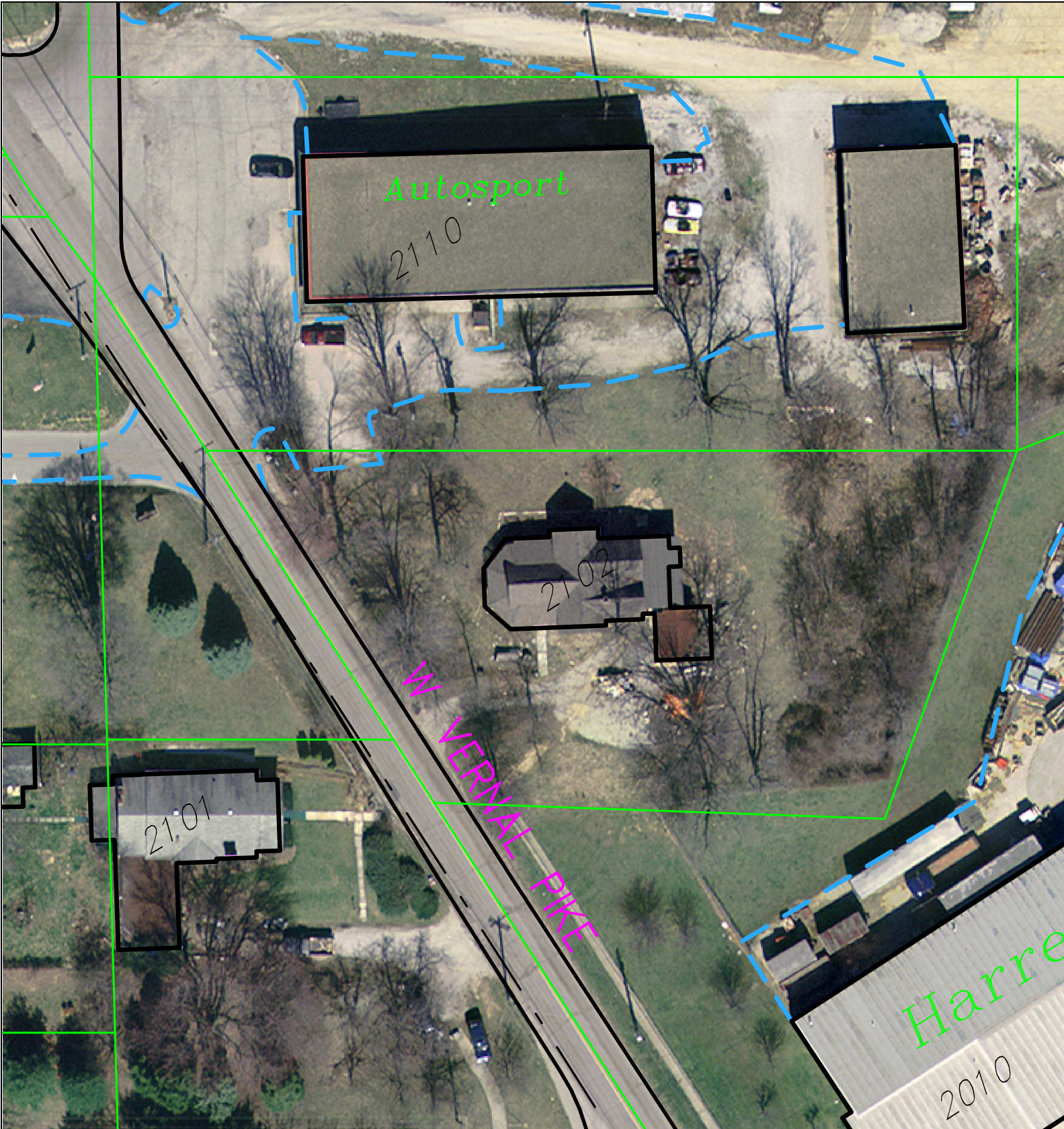
REGINA MOORE, Clerk
City of Bloomington

SIGNED AND APPROVED by me upon this ____ day of _____, 2007.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Chapter 8.20 of the Bloomington Municipal Code entitled “The List of Designated Historic Districts” in order to designate “2102 West Vernal Pike” as a historic district and rate it a “notable” structure. The Petitioners sought these actions and, after a public hearing on July 12, 2007, the Historic Preservation Commission recommended them to the Common Council based upon certain historic and architectural criteria set forth in Title 8 (Historic Preservation and Protection). Endangered by the encroachment of modern commercial development, this Queen Anne style farmhouse is the best example of its kind on the west side of town and is important in its integrity of setting as well as the architecture of the house itself. The survival of a fieldstone wall which surrounds the house enhances the site’s historic significance and, is identified as an additional notable resource. Once this ordinance has been adopted, the property would be regulated by the requirements that apply to all historic and architecturally worthy districts so designated by the Common Council. These regulations preserve and protect the property from demolition and include the review of exterior modifications.



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HD-01-07

2102 West Vernal Pike

Staff Report:

Bloomington Historic Preservation Commission

The property at, 2102 West Vernal Pike qualifies for local designation under the following highlighted criteria found in Ordinance 95-20 of the Municipal Code (1) a and c and (2) a, e, f, and g:

(1) Historic:



a. Has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, state, or nation; or is associated with a person who played a significant role in local, state, or national history; or

b. Is the site of an historic event; or



c. Exemplifies the cultural, political, economic, social, or historic heritage of the community.

(2) Architecturally worthy:



a. Embodies distinguishing characteristics of an architectural or engineering type; or

b. Is the work of a designer whose individual work has significantly influenced the development of the community; or

Is the work of a designer of such prominence that such work gains its value from the designer's reputation; or

d. Contains elements of design, detail, materials, or craftsmanship which represent a significant innovation; or



e. Contains any architectural style, detail, or other element in danger of being lost; or



f. Owing to its unique location or physical characteristics, represents an established and familiar visual feature of the city; or



g. Exemplifies the built environment in an era of history characterized by a distinctive architectural style

105-055-90183 N

House, 2102 West Vernal Pike; Queen Anne, c.1880; Architecture

This is a request for designation by the owner, who has also requested a conditional use under a section of the Unified Development Ordinance that provides flexibility of use for historic properties. This is available only to locally designated properties. The owner wishes to obtain the following additional uses for the site which is currently zoned RS:

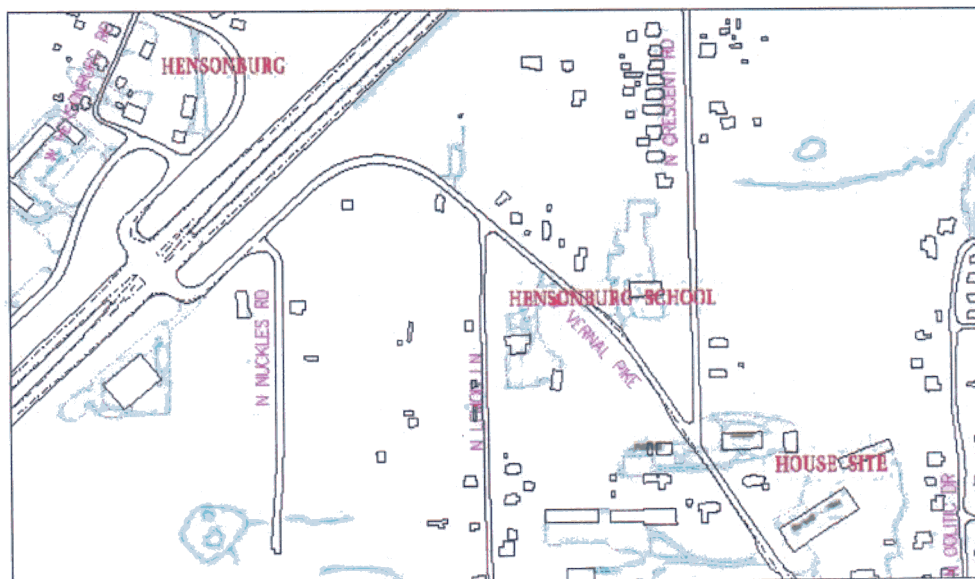
- Art gallery
- Artist studio
- Barber/beauty shop
- Business/professional office
- Florist
- Garden shop
- Gift shop

- Health spa
- Medical clinic
- Pet grooming
- Photographic studio
- Restaurant, limited service
- Retail, low-intensity
- Social service
- Tailor/seamstress shop

The owner has restored the property using the Secretary of the Interior's Standards, after purchasing it in seriously neglected condition. Designation will assure its continued preservation.

This Queen Anne style house, surrounded by a unique mortared fieldstone wall, is located near what was once called "Hensonburg" at the intersection of Vernal and Crescent Road. Both the wall and the house are memorable features along this corridor. The wall is an extremely rare example of a fieldstone mortared wall in Monroe County, where the most characteristic type of indigenous rural wall is dry-laid limestone. Dry-laid walls can be observed on Maple Grove Road and form a major feature of the National Register district's significance. Until the current owner's possession, the house suffered from a lack of maintenance. The house was acquired by BRI while it was in serious decline and sold with the understanding that it would be restored by the owner. The site is a little more than a half acre and is surrounded on its south and east sides by the stone fence. A 16 x 20' vertical board shed is attached to the house on its northeast corner. There is significant mature tree canopy and an existing gravel drive and parking area to the south east of the house and a new compatibly designed addition on the rear.

The small community named Hensonburg (or Hinsonburg) centered along Vernal Pike just west of the current SR 37. It was named after an African American man named Preston Henson. The platting for Hensonburg was done in two phases in 1893 and 1895. The 1895 addition was signed by James and Caroline Henson. Vernal, in those days, was called Spencer and Bloomington Road or later, Ellettsville Road. A street called Hensonburg Road still runs through the center of the settlement, although it is now surrounded by commercial and heavy industrial development. Even at this early time, it was still considered a part of Bloomington. The



community was later identified by the construction of a grade school (1-8) in 1916 located much closer to the subject property. Later, a meatpacking plant and a stone quarry operated by Consolidated Stone provided enough employment to keep the community viable.

Vernal Pike first appears as a named street in the 1916 city directory. As early as 1918 James Cirgin and his wife are listed as 'farmers' in the house. Early (1949) aerial photographs show a larger parcel and several outbuildings which are probably barns. It is presumed that the grocery associated with the owners of the house operated out of a commercial building located on the corner of Crescent and Vernal. This was the probable location of the grocery which James Cirgin later owned, called the Cirgin Market or Cirgin grocery, it remained until 1971. In the 1930's it was called Crescent Hill Market. James Cirgin died in 1930 leaving the business to his sons. William Burton, who grew up in the area remembers and attended the Hensonburg School, remembers walking behind the Cirgin Grocery in a field on his way to school in the 1950's.

The house has very good integrity, in structure as well as in its setting. The basic T-plan cottage is shaped by intersecting principal gables. The wrap around porch may have been replaced at



some time in the past. The Tuscan columns may be original, but turned columns would have been more common for this style. Distinctly Queen Anne details include the shaped shingling beneath the gables and in a course around the middle of the house. The shape of the gable

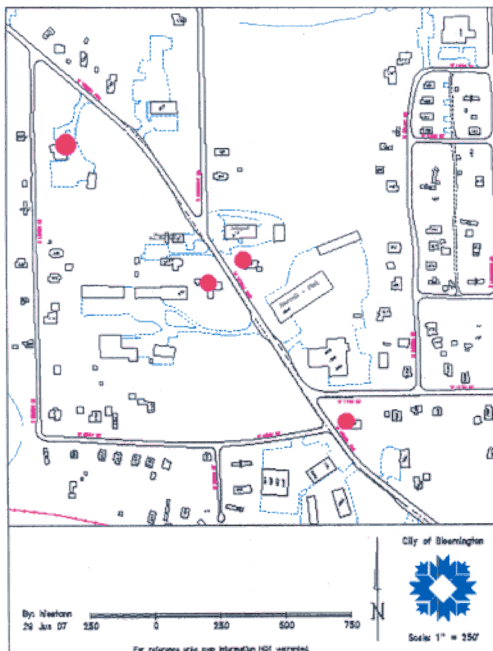
shingles appear to be unique for each elevation of the house. The window lintels are capped and built up with consoles. There are pendant brackets on either side of the chamfered bays. The doors are characteristically Eastlake in style with routed and incised decoration and with raised rounded frames surrounding the panels. The interior details, which have also been preserved, are Eastlake as well. Arts and Crafts windows added to a room on the southwest corner of the house may indicate a later addition just behind the front porch. The current owner built a rear addition on the footprint of a dilapidated back porch. Although all the outbuildings have long since been demolished, a period shed remains with vertical siding and a metal roof.



The house is exceptional in its survival in a high speed commercial area. The old grocery building still stands and was the site of an auto repair shop for many years. A large plumbing supply business was built to the east of the house. There is another historically surveyed residential property (c. 1920) directly across the street and another 700 feet away. The Hensonburg School building still stands, adapted as offices.

The following map identifies properties of historic value along Vernal Pike. Three of these are in the current inventory, another is an early bungalow with interesting molded concrete block

construction which is not noted in the current survey. Because these properties are separated by modern industrial and commercial buildings, they could not be easily become part of a district. Additionally the residential properties are endangered by the expansion of large footprint commercial development along this corridor. The Hensonburg four room school building, that still stands was built in 1930 after a fire destroyed the wooden 2 room structure. It was used as a grade school until 1961.



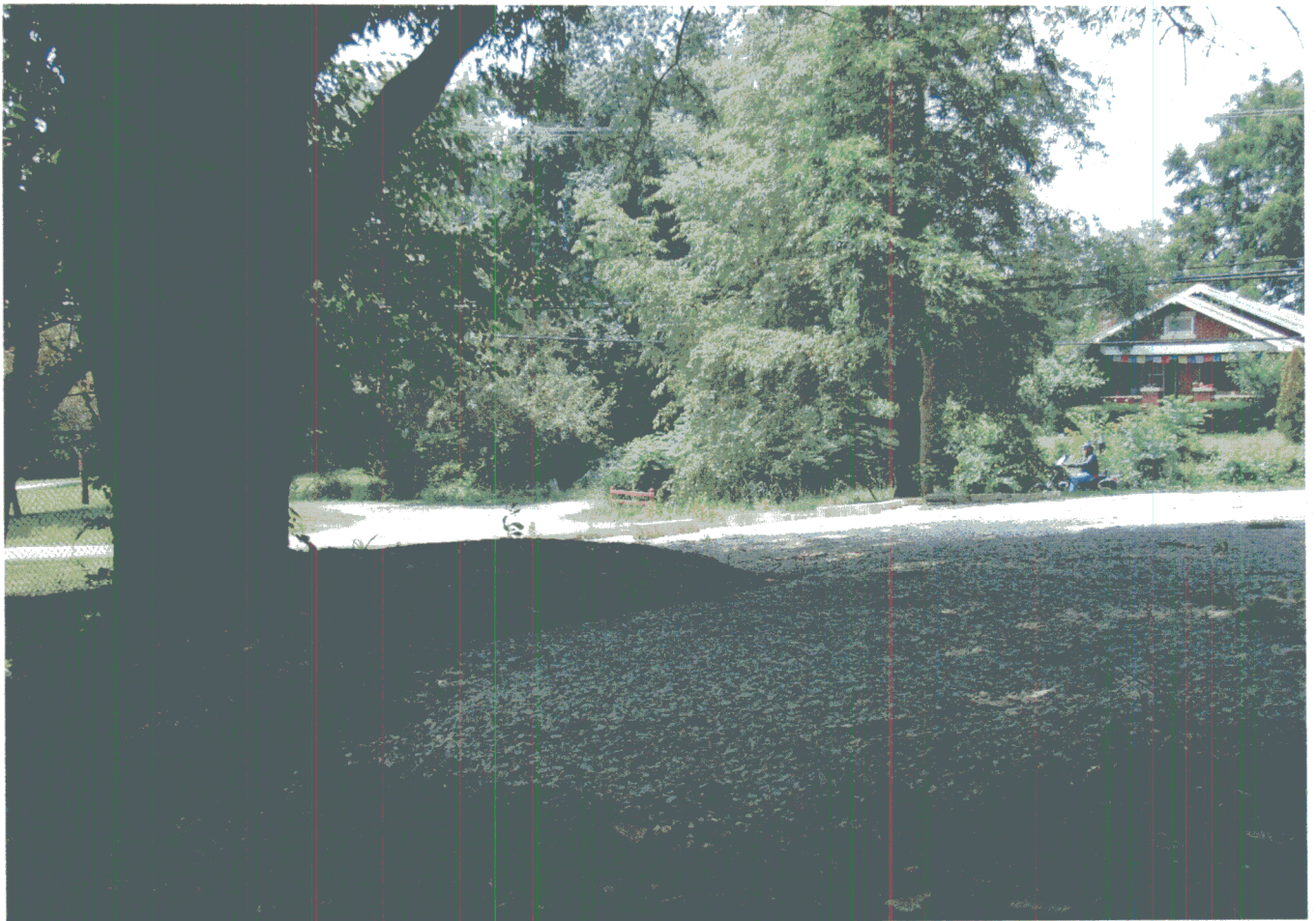
The owner has requested this designation in order to get flexibility of use with the UDO's conditional use section. The likelihood of future residential use is small, particularly after the owner's substantial investment. Current code requires several upgrades to the site plan when a change of use is proposed. These include paved parking, sidewalk construction and handicapped access and parking. The owner plans to attend the July 19th BZA meeting to request variances.

Staff recommends approval of this designation with a classification as "notable."



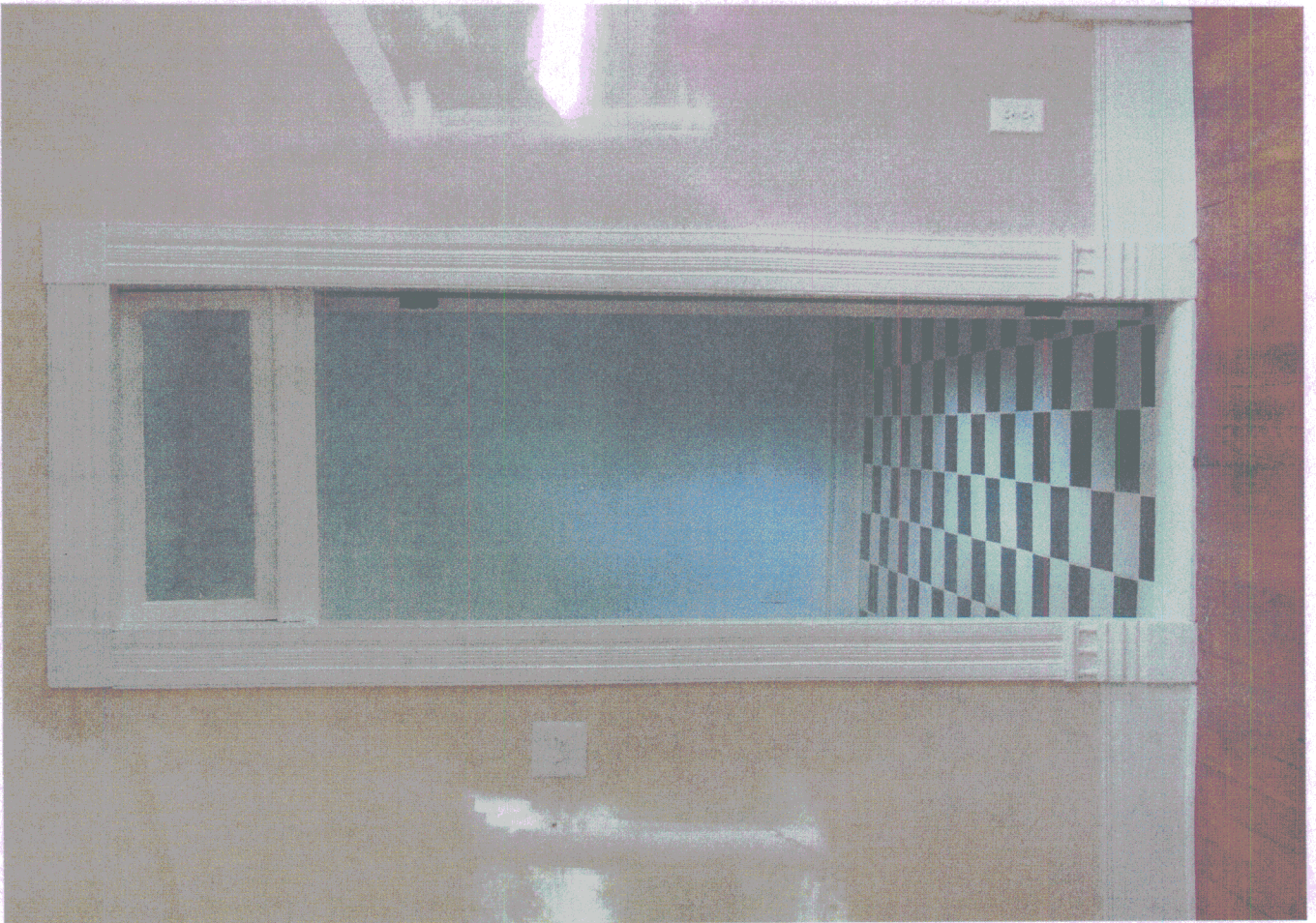














Western Regional Office
643 Wabash Avenue
Terre Haute, Indiana 47807
812/232-4534

July 9, 2007

Common Council
City of Bloomington
401 N. Morton St., Suite 110
Bloomington, IN

Dear Council Members:

I am pleased to provide this letter of support for the local historic district designation of 2102 West Vernal Pike that has been requested by current property owners, John & Vivian Galligan.

Historic Landmarks Foundation holds a vested interest in this property, having assisted Bloomington Restorations, Inc. (BRI) through our Statewide Revolving Loan Fund in the purchase of the property in June 2004. BRI's subsequent sale of the property to the Galligans proved a preservation success when one views the impressive rehabilitation that has taken place. The restoration of the architectural detail of the Queen Anne house and continued improvements to the site has made this a truly significant landmark along West Vernal Pike. In addition to the significant investment made, the request of local designation further demonstrates the owners' commitment to long-term preservation of the property. To ensure that the Galligans are able to continue to pursue sympathetic commercial reuse of the property and historic house, I express my support for the conditional use variance that is also being requested.

It is my understanding that the City will require that certain improvements be made to the property should the conditional use be granted. While I commend the City's diligence in assuring proper access, convenience and public safety associated with the subject property, I ask the City to give due consideration to the historic character and features of 2102 West Vernal Pike when specifications for mandated improvements are made. In particular, I urge caution in the treatment, size and placement of any sidewalk that may be required to prevent against unnecessary damage to the historic stone retaining wall. The possible requirement of paved parking on the site also concerns me as it would no doubt diminish the historic integrity of this once rural property.

I greatly appreciate the City of Bloomington's ongoing commitment to historic preservation and I believe that the approval of the requested local designation and

conditional use will further local preservation efforts. Thank you for the opportunity to comment on this decision before you.

Sincerely,

A handwritten signature in black ink, reading "Tommy Kleckner". The signature is written in a cursive, flowing style.

Tommy Kleckner, Director
Western Regional Office

cc: Mark Dollase, Historic Landmarks Foundation of Indiana
Steve Wyatt, Bloomington Restorations, Inc.
Duncan Campbell, Board, Historic Landmarks Foundation of Indiana
Vivian Galligan

APPLICATION FORM:
Historic Designation
Historic Preservation Commission of the City of Bloomington

Case Number: HD-01-07

Date Filed: 5-3-07

Date of Commission Hearing:
7-12-07

Request: Conservation or Historic District: ☒

Request: Primary of Secondary Areas: YES ☐ NO ☒

Address of proposed district or description of boundaries:

2102 W. VERNAL PIKE

Petitioner's Name: VIVIAN GALLIGAN, JOHN GALLIGAN, JR
2205 ALTON DR JOHN GALLIGAN III

Petitioner's Address: _____ Phone Number: 336-1117 (w)

Owner's Address: 2205 ALTON DR 47401

Instructions to Petitioners

The petitioner must attend a preliminary meeting with the staff of the Bloomington Historic Preservation Commission in the Housing and Neighborhood Development Department during which the petitioner will be advised as to the appropriateness of the designation. **Petitioner, at the time of filing must present a list of property owners and adjacent property owners to the Commission.** Notice by first class mail must be mailed 10 days before the public hearing at which the action is taken. Upon receiving the application the Commission will appoint an ad hoc Historic District Committee. If the petitioner is other than the Historic Commission or the district larger than one structure and its accessory buildings, then the Commission will appoint property owners within the proposed district and the Common Council member of that jurisdiction to a special committee which will coordinate required public meetings concerning the designation. The Ad Hoc Committee will determine if secondary and primary areas will be assigned to the district and will categorize each building on the basis of merit.

Our property, 2102 W. Vernal Pike, is a late Victorian Queen Anne Farmhouse, We purchased the building in August 2004 from Bloomington Restorations Inc. The Historic Landmarks Foundation of Indiana had awarded BRI a loan to purchase the property which was threatened with demolition. The house is listed as Notable in the 2001 Bloomington Historic survey.

We are requesting an historic designation from the City of Bloomington based on both the building's historic and architectural value to the community.

The building has been described by the Historic Landmarks Foundation of Indiana as a wonderful high-style Queen Anne cottage on what was originally a **prominent rural property**. It stands alone as an elegant link to the past. On the east side of Vernal Pike it is flanked on one side by a former auto repair shop and on the other by a mechanical contractor's building. To anyone traveling on Vernal Pike between highway 37 and downtown it is a **familiar visual feature**. It has **significant value as part of the heritage of Bloomington and Monroe County**.

The exact date the house was build is unclear. From our research and through the restoration process we have concluded that it would have been built somewhere between 1890- 1900.

During the earliest years of the 20th century the property was owned by John and Anna Buzzard. The 1900 Census shows them as being 65, from Pennsylvania and 62, from North Carolina, respectively. Little other information about them was found.

Moving forward to the 1920 we found that the property was listed as a farm and it would appear that there was a market next door to the house.

At the time of the 1930 census the Cirgin family lived in the building. James Cirgin, the head of the household listed his occupation as Merchant with an industry of General Store. His wife, Anna, was listed as a clerk in the general store. Their two sons were listed as stone cutters. - making the family representative of a typical Hoosier family. Researching through the City Directories of the 1920s - 1970s we found that James was initially a meat cutter (1920 - 29), then grocer (1929-30) and in 1931-32 proprietor - Crescent Hill Market. A hand written note in the 1929 directory says he died suddenly of a heart attack - no date given. James' widow, Anna, continued on as grocer through the 1940s with her son Frank as manager. Their son Glen continued on as a stonecutter. During the 1940's the store became known as Cirgin's Market then later Cirgin's Grocery. The last listing for the market was in 1971. For several years after, Frank was listed as retired. During the time that the Cirgins had their market, they would have been an important part of the community. They would have been a representative Hoosier family. They farmed, operated a market and were involved in one of Bloomington's primary industries - stonecutting. It doesn't take too much imagination to see a young James Cirgin, then a meat cutter, traveling between his home on Vernal Pike and a slaughter house on Packinghouse Road. Later, after the advent of the market, we have been told that people came to the Cirgins to use their telephone, since not every house hold one. We can picture children stopping off at the market on the way to or from school at the Hensonburg School located just down the road. All these images of a way of life long gone come to mind as we look at the house from the road. It is a good thing to keep these reminders of our past. Too often the needs of the present - asphalt, concrete - intrude and distort these images, making it increasing difficult to bring them back to mind.

ORDINANCE 07-16

**TO AMEND TITLE 14 OF THE BLOOMINGTON MUNICIPAL CODE,
ENTITLED “PEACE AND SAFETY”
(Providing a Comprehensive Revision of Chapter 14.09, entitled “Noise Control”)**

- WHEREAS, pursuant to its police power, the City of Bloomington adopted a Noise Control Ordinance in 1973 in order to protect its citizens from unreasonable and offensive noise; and
- WHEREAS, the Noise Control Ordinance has, from time to time, been amended in part but has not been substantially updated since its original adoption; and
- WHEREAS, the City of Bloomington deems it necessary to comprehensively update its Noise Ordinance in order to respond to changes in the law as well as current and contemporary concerns of its citizens and to preserve the quality of life for those who live within the City of Bloomington;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The current provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.010 *Public policy and purpose* shall be amended to read as follows:

It is declared to be the public policy of the city to prohibit unreasonable, unnecessary, excessive and offensive noise from all sources subject to its police power. Above certain levels noise is detrimental to the health, welfare, safety, comfort, and repose of the citizenry and in the public interest shall be systematically regulated and proscribed by the city.

SECTION 2. The current provisions contained in Chapter 14.09 of the Bloomington Municipal Codes, Section 14.09.020 *Definitions* shall be amended to list the items alphabetically, delete the letters in parentheses prior to each item, and to read as follows:

As used in this chapter unless context clearly requires otherwise:

“Baffle” means a device to deflect, check or regulate the flow or passage of sound.

Classification of areas into residential, school, hospital, church, commercial manufacturing and/or business zones for purposes of this chapter shall be as defined in the then existing city zoning ordinance. For purposes of this chapter hospital, school and church zones shall be considered as residential zones.

"Emergency work" means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or work by private or public utilities when restoring utility service.

"Holidays" means the following six days as observed according to Indiana Code 1-1-9-1: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

"Motor vehicles" means and includes any and all self-propelled vehicles as defined by IC 9-13-2-105(a).

"Muffler" means any device used upon a motor vehicle whose purpose is the deadening of combustion noises of any engine thereon, or the deadening of any other motor noises, including but not limited to the noise of exhaust gases, or any other mechanical device for the deadening of the noise and intake gases upon a motor vehicle.

"Person" means a person, firm, association, co-partnership, joint venture, corporation, or any entity, public or private in nature.

"Pneumatic hammers" when used in Section 14.09.040 means pneumatic hammers that are driven by compressors with greater than ten horsepower or that use a hose with a diameter greater than three-eighths of an inch.

“Premises” means a place in which a person has right of legal, private occupancy.

SECTION 3. The current provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.030 *Sound pressure level or noise measurements* shall be deleted.

SECTION 4. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.040 *Sound pressure level limits in dB(A) for single noise or sound sources in residential, business and manufacturing zones* shall be deleted.

SECTION 5. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.050 *Noises Prohibited* shall be renumbered as 14.09.030 and shall be amended to read as follows:

- (a) For purposes of this chapter, unreasonable noise shall mean sound that is of a volume, frequency, or pattern that prevents, disrupts, injures, or endangers the health, safety, welfare, prosperity, comfort or repose of reasonable persons of ordinary sensitivities within the City of Bloomington, given the time of day or environment in which the sound is made.
- (b) Except as otherwise provided in this chapter, it shall be unlawful for any person to cause or make any unreasonable noise or to allow any unreasonable noise to be caused or made in or on any real or personal property occupied or controlled by that person.
- (c) In addition to the foregoing, the following acts are violations of this chapter:
 - (1) It shall be a violation of this chapter to operate a motor vehicle with an internal combustion, steam or air motor unless the motor vehicle is equipped with a suitable and efficient muffler or baffle. A muffler or baffle shall be considered suitable and efficient, for purposes of this chapter, when the vehicle does not create unreasonable noise. Except by specific governmental authorization given by the mayor or his or her duly authorized representative, no person while on a public or private highway, street or road shall operate a motor vehicle with the muffler or baffle cut out or removed. No cutout shall be so arranged or connected as to permit its operation or control by the driver of any motor vehicle while in position for driving or by a passenger of any motor vehicle.
 - (2) Except as used for warning purposes, it shall be a violation of this chapter for any person to use, operate or sound any horn or signaling device on any motor vehicle in any public street or public place in the City for any unreasonable period of time.
 - (3) It shall be a violation of this chapter to play, use, or operate or allow to be played, used, or operated in any motor vehicle any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound at a volume that is louder than necessary for the convenient hearing of persons who are inside the vehicle within which such device is played, used or operated. Sound that is clearly audible thirty feet or more from the vehicle is prima facie evidence of a violation of this section.
 - (4) It shall be a violation of this chapter to play, use, operate or allow to be played, used, or operated any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound in such a manner that the sound produced persists continuously or intermittently for a period of at least fifteen minutes and can be heard outside the immediate premises from the location of the emitter by a person with normal hearing. Sound that is clearly audible to a person with normal hearing from any place other than the premises from which the source of the sound is located, when the sound occurs between the hours of 9:00 p.m. and 7:00 a.m., is prima facie evidence of a violation of this section.

SECTION 6. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.060 *Exemptions* shall be renumbered as Section 14.09.040 and shall be amended to read as follows:

The following uses and activities shall be exempt from the provisions of this chapter:

- (a) Nonamplified crowd noises resulting from legal activities, between the hours of 6:00 a.m. and 10:00 p.m.;

(b) Construction operations for which building permits have been issued or construction operations for which a permit is not required shall be exempt from the noise control ordinance under the following conditions and with the following exceptions:

(1) Such operations that occur after 6:00 a.m. and before 10:00 p.m., except on Sundays and holidays, as defined in Section 14.09.020. However, in recognition of the work necessary to prepare and close a site each day, motor vehicles transporting heavy construction equipment or construction materials to and from construction sites at those times shall be exempt from the time restrictions set forth above.

(2) Because of the loud and unusual sounds, and the ground vibrations associated with pile drivers, steam shovels, pneumatic hammers, and steam or diesel gasoline hoists, the operation of this equipment shall be exempt but only when it occurs between the hours of 7:00 a.m. and 8:00 p.m. or when allowed by special permit.

(3) In order to be exempt, all equipment used in such operations shall be operated with the manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.

(c) Noises of safety signals, warning devices, and emergency pressure relief valves;

(d) Noises resulting from any authorized emergency, fire or police vehicle when responding to an emergency call, acting in time of emergency or in connection with official police or fire department business;

(e) Noises resulting from emergency work as defined in Section 14.09.020;

(f) Noises made by churches using bells as part of their religious observance and by persons having obtained a permit to use the streets;

(g) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control and instructions and pursuant to and within the duly adopted federal air regulations. Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations is also exempt;

(h) All noises resulting from normal operations of railroad trains are exempt as provided by state or federal law;

(i) Noises resulting from burglar alarms and other warning devices when properly installed, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time;

(j) Noises resulting from rubbish collection utilizing any mechanical equipment between the hours of 5:00 a.m. and 10:00 p.m. only;

(k) Noises associated with equipment or animals lawfully utilized by persons with disabilities to accommodate their disability;

(l) Noises associated with legal consumer fireworks used during the times Indiana Code prohibits regulation by municipalities, which are as follows:

(1) Between the hours of 5:00 p.m. and two hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, and July 9;

(2) Between the hours of 10:00 a.m. and 12:00 midnight on July 4; and

(3) Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1;

(m) Any other noise resulting from activities of a temporary duration permitted by law and for which a permit has been granted by the city of Bloomington in accordance with Section 14.09.050. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in Section 14.09.050.

SECTION 7. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.070 *Special Permits* shall be renumbered as Section 14.09.050 and shall be amended to read as follows:

Applications for a permit for relief from the regulations contained in this chapter shall be made in writing to the mayor or his or her duly authorized representative. Any permit granted by the mayor or duly authorized representative must be in writing and shall contain all conditions upon which said permit shall be effective. The mayor, or duly authorized representative may prescribe any reasonable conditions or requirements he or she deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

SECTION 8. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.080 *Other noises prohibited – Standards for unnecessary noise* shall be deleted.

SECTION 9. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.090 *Enforcement* shall be renumbered as Section 14.09.060 and shall be amended to read as follows:

(a) This chapter shall be enforced by the mayor, or his or her duly authorized representative, the Bloomington Police Department and/or civil servants, appointed with the approval of the common council.

(b) Each person charged with enforcement of this chapter shall have the power and authority to issue all orders and give notice of violations as are designated under this chapter. Such person, or persons, shall keep complete and accurate records. Non-police officers, who seek to enforce the provisions of this chapter, may not stop moving vehicles.

SECTION 10. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.100 *Violations, penalties and appeals* shall be renumbered as Section 14.09.070 and shall be amended to read as follows:

(a) Any person charged with violating the provisions of this chapter may, in the discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this chapter's provisions.

(b) Any person violating any of the provisions of this chapter, shall, upon a written finding of violation signed by the enforcement officer, be subject to an initial penalty of fifty dollars. Each day such violation is committed or permitted to continue shall constitute a separate offense. A second violation in any twelve month period is subject to a fine or penalty of one hundred dollars and subsequent violations within a twelve month period are subject to a fine or penalty of five hundred dollars.

(c) Upon written findings of a violation by the same person for the same offense three times within a consecutive twelve-month period, when such noise is created by the same noise emitter or same type of noise emitter, the noise creating device may be ordered by the enforcement officer to cease being used or operated until it can be brought into compliance with this chapter.

(d) Any person issued a written notice of violation of this chapter shall pay the total amount of the penalty to the City of Bloomington within seven days of such notice, unless such notice is appealed in conformity with Section 14.09.070(e).

(e) All appeals from written finding of the enforcement officer must be taken, within seven days, to the Board of Public Works.

(f) All appeals from written findings of the Board of Public Works shall be made to courts of competent jurisdiction within seven days.

(g) Upon failure to appeal an adverse finding or failure to comply with a written order or assessed penalty, the city Legal Department shall be empowered to take all appropriate action necessary to enforce the written findings of the enforcement officer or of the Board of Public Works.

SECTION 11. The current Section 14.09.110 *Severability* shall be deleted .

SECTION 12. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 13. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor, and publication in accordance with State law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2007.

DAVE ROLLO, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2007.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2007.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance updates the City of Bloomington’s Noise Control provisions contained in the Bloomington Municipal Code. In brief, the amendments:

- Eliminate the complicated sound pressure level limits and measurements found in the current code and introduce a “reasonable person with ordinary sensitivity” standard to provide notice to persons of what constitutes a violation;
- Consolidate all prohibited noises into just one section, as opposed to two, and craft provisions that clearly address contemporary concerns, including noise from vehicles;
- Modify existing exemptions, in part, by setting a predictable time for loud construction activities to begin each morning at 6:00 a.m. (rather than at sunrise) and adds new exemptions that cover activities, which are common, necessary or specifically allowed by law;
- Modify the special permit section, resulting in only one class of special permits issued by the Mayor or his representative, which should not significantly impact or change current practices; and
- Lastly, escalate fines from \$50 for the first offense, \$100 for the second offense, and \$500 for the third offense committed within 12 months and direct appeals to the Board of Public Works.

Corporation Counsel
Kevin R. Robling

City Attorney
Patricia Stanton Bernens

Assistant City Attorneys
Susan Failey
Jacquelyn F. Moore
Patricia M. Mulvihill
Vickie Renfrow
Margie Rice
Margie Goodwin Schrader

TO: Members of the Common Council of the City of Bloomington

CC: Mayor Mark Kruzan; Kevin R. Robling, Corporation Counsel

FROM: Margie Rice, Assistant City Attorney/Risk Manager

DATE: July 9, 2007

RE: Amendments to the City of Bloomington's Noise Control Ordinance

The proposed amendments to the City of Bloomington's Noise Control Ordinance are largely designed to make our local code easier to follow and enforce. With the addition of a "reasonableness" standard, the ordinance complies with prevailing case law and responds to concerns addressed in a 2005 Indiana Court of Appeals case, which found Indianapolis' noise ordinance vague and, therefore, unconstitutional. According to the Indiana Court of Appeals, a "reasonableness" standard provides an intelligible enforcement guideline and discourages arbitrary and discriminatory enforcement. Accordingly, it is proposed that reasonableness be the guide employed by the City to control and monitor noise. The following paragraphs highlight a few of the main amendments to the current ordinance:

- Reduced from eleven provisions to eight, the proposed ordinance is clearer and more straight forward. The complicated sound pressure level limits and measurements have been removed.
- All prohibited noises are now contained in just one section, as opposed to two. Also, the prohibited noises section now clearly addresses contemporary concerns, including noise from vehicles.
- Additional exemptions have been added to include activities, which are common, necessary or specifically allowed by law. The current exemption for permitted construction operations has been amended to set a predictable time all year long (6:00 a.m to 10:00 p.m.), based on standard construction practices.
- Several provisions have been removed from the special permit section, resulting in only one class of special permits issued by the Mayor or his representative; however, these changes should not significantly impact or change our current practices.
- Lastly, the violations, penalties and appeals section has been enhanced. Instead of a simple fifty dollar fine, those who continue to violate the City's noise ordinance within a twelve month period will face increased penalties of \$100 for a second violation and \$500 for subsequent violations. It is proposed that appeals be taken to the Board of Public Works.

Chapter 14.09 NOISE CONTROL

14.09.010 Public policy and purpose.

It is declared to be the public policy of the city to prohibit unreasonable, unnecessary, excessive and offensive noise from all sources subject to its police power. Above certain levels noise is detrimental to the health, ~~and~~ welfare, safety, comfort, and repose of the citizenry and in the public interest shall be systematically regulated and proscribed by the city.

14.09.020 Definitions.

As used in this chapter unless context clearly requires otherwise:

~~(a) "Sound pressure level", in decibels, means that level measured by a sound pressure level meter using the A-weighted scale as defined in the American National Standard S-1.4-1971.~~

~~(b) "Noise" means that sound, sound made by people, or combination of sounds, which exceeds the sound pressure level as established by this chapter for a particular sound-producing object, vehicle, residential zone, hospital zone, church zone, school zone, or any other area limited by this chapter.~~

~~(c) "Sound pressure level meter" means an instrument including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound pressure levels in a manner specified by this chapter that the slow meter response of the sound pressure level meter shall be used in order to best determine the average pressure.~~

~~(d) "Person" means a person, firm, association, co-partnership, joint venture, corporation, or any entity, public or private in nature.~~

~~(e) "Emergency work" means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or work by private or public utilities when restoring utility service.~~

~~(f) "Nonstationary source" means a machine or device capable of being moved from place to place for occasional or temporary use at a given location including, but not limited to, motor vehicles, pile drivers and bulldozers.~~

~~(g) "Fixed source" means a machine or device capable of creating a noise level at the property upon which it is regularly located, or upon which it is regularly used, which projects into another property; this includes but is not limited to industrial and commercial process machinery and equipment, pumps, fans, air-conditioning apparatus, refrigeration machines, powered lawn mowers, and chain saws.~~

~~(h)~~ "Motor vehicles" means and includes any and all self-propelled vehicles as defined in ~~Burns Indiana Statutes § 47-1802, IC 9-4-1-2~~ by IC 9-13-2-105(a).

~~(i)~~ Classification of areas into residential, school, hospital, church, commercial manufacturing and/or business zones for purposes of this chapter shall be as defined in the then existing city zoning ordinance. For purposes of this chapter hospital, school and church zones shall be considered as residential zones.

~~(j)~~ "Daytime" for nonstationary sources means ~~six (6) a.m. to eleven (11) p.m. seven (7) a.m. to ten (10) p.m. and "night time" for nonstationary sources shall mean eleven (11) p.m. to six (6) a.m. ten (10) p.m. to seven (7) a.m.;~~ "daytime" for Fixed sources shall mean ~~seven (7) a.m. to nine (9) p.m. and "night time" for Fixed sources shall mean nine (9) p.m. to seven (7) a.m.~~

~~(k)~~ "Muffler" means any device used upon a motor vehicle whose purpose is the deadening of combustion noises of any engine thereon, or the deadening of any other motor noises, including but not limited to the noise of exhaust gases, or any other mechanical device for the deadening of the noise and intake gases upon a motor vehicle.

~~(l)~~ "Holidays" means the following six days as observed according to Indiana Code 1-1-9-1: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

~~(m)~~ "Pneumatic hammers" when used in Section ~~14.09.060~~ 14.09.040 means pneumatic hammers that are driven by compressors with greater than ten horsepower or that use a hose with a diameter greater than three-eighths of an inch.

"Baffle" means a device to deflect, check or regulate the flow or passage of sound.

"Premises" means a place in which a person has right of legal, private occupancy.

14.09.030 Sound pressure level or noise measurements.

~~(a) All sound pressure level or noise measurement shall be made by a designated police officer, or a police officer using a police patrol vehicle equipped for sound pressure level measurements, or a designated civil servant who shall be appointed by the Bloomington Environmental Quality and Conservation Commission, with the approval of the Common Council, whose duties would but not be limited to, investigation, study and/or measurement of sound pressure levels in and for the City of Bloomington. Provided, however, that such police officer(s) or employee(s) of the Environmental Commission shall be trained in the use of the sound monitoring equipment by the Indiana University Speech and Hearing Department, or any other recognized school, institute or other group which has as a principal part of its function the study, investigation, and measurement of sound.~~

(b) Measurement of sound or noise shall be made with a sound pressure level meter meeting the standards prescribed by the American Standards Association. The instrument(s) shall be maintained in calibration and good working order. A calibration check shall be made of the system before or after any sound or noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound or noise. A windscreens shall always be used.

(c) Measurement shall be made at any point on the property into which the noise is being transmitted and shall be made at least three (3) feet away from any ground, wall, floor, ceiling, roof, or other plane surface.

(d) In the event of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has right of legal private occupancy; provided, that the measurement shall be made at least three feet away from any ground, wall, floor, ceiling, roof, or other plane surface.

(e) The average measurement for this chapter shall be the sum of all the readings taken divided by the number of readings.

(f) Measurement of motor vehicles shall be taken at least fifty feet from the center line of travel of the source in areas other than residential. If the noise projects into private residential property, residential property as defined in Section 14.09.020 (i), then measurement for purposes of investigating a complaint made by a citizen on any public street shall be taken at least twenty feet from the center line of travel of the source.

(g) The procedure for measurement of motor vehicles shall be as follows: One measurement is to be made when the vehicle is one hundred and ten feet from the point of placement of the sound pressure level meter as measured along the line of travel; a second reading shall be taken when the vehicle is parallel to the point of placement of the sound pressure level meter. The median measurement shall then be recorded as the measurement for that moving vehicle.

(h) If a measurement is taken at the boundary of two zones then the more restrictive zone's standards shall apply.

14.09.040 Sound pressure level limits in dB(A) for single noise or sound sources in residential, business and manufacturing zones.

(a) For stationary, or fixed sources, the required measurement of sound shall consist of readings taken at ten second intervals for three minutes within a one hour period. For non-stationary sources, like motor vehicles, the required measurement shall consist of two readings taken within a one hour period. The average measurement for these sources shall not exceed the sound pressure level limits for the locations and times listed in the chart below:

Zones	1973 to September 1, 1978	
	Daytime	Night time
Residential	80	70

Business	80	75
Manufacturing	85	75

(b) Levels for 1978 and after shall be as follows: provided that review and approval of these levels by the Environmental Commission, or its authorized representative, shall be made within one year prior to September 1, 1978. Such review must take into consideration the existing federal and state standards concerning manufacture and sale of sound producing objects, vehicles, and machinery. The Environmental Commission, or its authorized representative, shall be empowered to adjust these levels after said review to reflect current manufacturing techniques and/or standards set by the federal or state government:

Zones	After September 1, 1978	
	Daytime	Night time
Residential	72	62
Business	78	70
Manufacturing	85	70

(c) Mandatory public review of this chapter shall take place within six months of date of passage and annually thereafter. Reviews shall be conducted under auspices of the Environmental Commission and must be publically advertised at least one month prior to being held.

14.09.050 14.09.030 Noises prohibited.

(a) For purposes of this chapter, unreasonable noise shall mean sound that is of a volume, frequency, or pattern that prevents, disrupts, injures, or endangers the health, safety, welfare, prosperity, comfort or repose of reasonable persons of ordinary sensitivities within the City of Bloomington, given the time of day or environment in which the sound is made.

(b) Except as otherwise provided in this chapter, it shall be unlawful for any person to cause or make any unreasonable noise or to allow any unreasonable noise to be caused or made in or on any real or personal property occupied or controlled by that person.

(c) In addition to the foregoing, the following acts are violations of this chapter:

(a) It shall be a violation of this chapter for any person to create any unnecessary, loud, disturbing, or offensive noise on any street, sidewalk, or public place adjacent to any school, institution of learning or church while any of the same is in use; or adjacent to any hospital at any time provided conspicuous signs are displayed in such streets,

~~sidewalks or public place indicating the presence of a school, institution of learning, church or hospital.~~

~~(b) It shall be a violation of this chapter to operate, or cause to be operated, any non-stationary source or fixed source which emits a noise above the limits set out in Section 14.09.040, except as specifically exempted in Section 14.09.060. Measurement shall be made in accordance with Section 14.09.030 (e), (d), (f), or (g).~~

~~(c) It shall be a violation of this chapter to operate a motor vehicle, or combination of vehicles towed by such motor vehicle which creates noise or sound which exceeds the noise level limits set out in Section 14.09.040 of this chapter.~~

~~(d) (1) Every~~ It shall be a violation of this chapter to operate a motor vehicle with an internal combustion, steam or air motor shall be unless the motor vehicle is equipped with a suitable and efficient muffler or baffle. A muffler or baffle shall be considered suitable and efficient, for purposes of this chapter, when it the vehicle does not create excessive unreasonable noise. Excessive noise shall be determined when any sound created by the motor vehicle at any time and under any condition exceeds the limits set out in Section 14.09.040. Except by specific governmental authorization given by the Bloomington Police Department or the office of the mayor or his or her duly authorized representative, no person while on a public or private highway, street or road shall operate a motor vehicle with the muffler or baffle cut out or removed. No cutout shall be so arranged or connected as to permit its operation or control by the driver of any motor vehicle while in position for driving or by a passenger of any motor vehicle.

(2) Except as used for warning purposes, it shall be a violation of this chapter for any person to use, operate or sound any horn or signaling device on any motor vehicle in any public street or public place in the City for any unreasonable period of time.

(3) It shall be a violation of this chapter to play, use, or operate or allow to be played, used, or operated in any motor vehicle any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound at a volume that is louder than necessary for the convenient hearing of persons who are inside the vehicle within which such device is played, used or operated. Sound that is clearly audible thirty feet or more from the vehicle is prima facie evidence of a violation of this section.

(4) It shall be a violation of this chapter to play, use, operate or allow to be played, used, or operated any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound in such a manner that the sound produced persists continuously or intermittently for a period of at least fifteen minutes and can be heard outside the immediate premises from the location of the emitter by a person with normal hearing. Sound that is clearly audible to a person with normal hearing from any place other than the premises from which the source of the sound is located, when the sound occurs

between the hours of 9:00 p.m. and 7:00 a.m., is prima facie evidence of a violation of this section.

~~14.09.060~~ 14.09.040 Exemptions.

The following uses and activities shall be exempt from ~~noise level regulations~~ the provisions of this chapter:

(a) Nonamplified crowd noises resulting from legal activities, between the hours of 6:00 ~~seven~~ a.m. and ~~nine~~ 10:00 p.m.;

(b) Construction operations for which building permits have been issued or construction operations for which a permit is not required shall be exempt from the noise control ordinance under the following conditions and with the following exceptions:

(1) Such operations that occur after ~~sunrise from the first of May to the first of September and after 6:00~~ six a.m. the rest of the year and before 10:00 ~~ten~~ p.m. ~~all year round shall be exempt from the noise level regulations~~, except on Sundays and holidays, as defined in Section 14.09.020, ~~during which time such operations are subject to noise level regulations~~. However, in recognition of the work necessary to prepare and close a site each day, motor vehicles transporting heavy construction equipment or construction materials to and from construction sites at those times shall be exempt from the ~~noise level regulations~~ time restrictions set forth above.

(2) Because of the loud and unusual sounds, and the ground vibrations associated with pile drivers, steam shovels, pneumatic hammers, and steam or diesel gasoline hoists, the operation of this equipment shall be exempt ~~from the noise level regulations~~ but only when it occurs between the hours of 7:00 ~~seven~~ a.m. and 8:00 ~~eight~~ p.m. or when allowed by special permit.

(3) In order to be exempt ~~from the noise level regulations~~, all equipment used in such operations shall be operated with the manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.

(c) Noises of safety signals, warning devices, and emergency pressure relief valves;

(d) Noises resulting from any authorized emergency, fire or police vehicle when responding to an emergency call, acting in time of emergency or in connection with official police or fire department business;

(e) Noises resulting from emergency work as defined in Section 14.09.020~~(e)~~;

(f) Noises made by churches using bells as part of their religious observance and by persons having obtained a permit to use the streets;

(g) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control and instructions and pursuant to and within the duly adopted federal air regulations ~~shall be exempt from provisions of Section 14.09.070 as well as other provisions of this chapter.~~ Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations ~~are~~ is also exempt;

(h) All noises resulting from normal operations of railroad trains are exempt; ~~provided, however, that excessive use of railroad train signaling devices shall be considered violations of this chapter;~~ as provided by state or federal law;

(i) Noises resulting from burglar alarms and other warning devices when properly installed, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time;

(j) Noises resulting from rubbish collection utilizing any mechanical equipment between the hours of 5:00 a.m. and 10:00 p.m. only;

(k) Noises associated with equipment or animals lawfully utilized by persons with disabilities to accommodate their disability;

(l) Noises associated with legal consumer fireworks used during the times Indiana Code prohibits regulation by municipalities, which are as follows:

i. Between the hours of 5:00 p.m. and two hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, and July 9;

ii. Between the hours of 10:00 a.m. and 12:00 midnight on July 4; and

iii. Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1;

(~~h~~) (m) Any other noise resulting from activities of a temporary duration permitted by law and for which a ~~license or permit~~ ~~therefore~~ has been granted by the city of Bloomington in accordance with Section ~~14.09.070~~ 14.09.050. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit ~~or license~~ and contained in Section ~~14.09.070~~ 14.09.050.

14.09.070 14.09.050 Special permits.

Applications for a permit for relief from the ~~maximum allowable noise level limits designated~~ regulations contained in this chapter shall be made in writing to the mayor, or his or her duly authorized representative. Any permit granted by the mayor or ~~other~~ duly authorized ~~person~~ representative must be in writing, ~~with appropriate copies to the police department, city engineer and environmental commission~~ and shall contain all conditions upon which said permit shall be effective. The mayor, or ~~other~~ duly authorized ~~person~~ representative may ~~grant the relief as applied for under the following~~

conditions; prescribe any reasonable conditions or requirements he or she deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.

~~(a) The mayor, or other authorized person, may prescribe any reasonable conditions or requirements he or she deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.~~

~~(b) Except in emergency situations, as determined by the mayor, or other authorized person, the temporary permit may be issued only for the hours between seven a.m. and nine p.m. and such permit shall not be issued for longer than one week, renewable by further application to the mayor or other authorized person. Provided, however, that such renewal(s) are not automatic nor be longer than four consecutive weeks.~~

~~(c) The mayor, or other authorized person, may issue special permits, that remain in force, for equipment that is maintained in good condition. Reasonable conditions may be placed upon the special permit and the special permit shall be renewed annually.~~

~~(d) The mayor may authorize civic event permits. These permits shall be limited to the hours of seven a.m. and twelve midnight, shall be issued for not longer than one day, and shall not be renewable.~~

~~The average noise level allowed under a civic event permit shall not exceed 115 dB(A) for more than three cumulative minutes in any one hour, when measured at a distance of fifty feet from the sound source.~~

~~14.09.080 Other noises prohibited-- Standards for unnecessary noise.~~

~~(a) Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits set forth in this chapter, but they may be excessive, unnatural, prolonged, unusual or are a detriment to the public health, comfort, convenience, safety and welfare of the residents of the City of Bloomington. Noises prohibited by this section are a violation of this chapter notwithstanding the fact that no violation of Sections 14.09.040 or 14.09.050 (b), (c), and (d) is involved. Thus the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive, namely:~~

~~(1) The sounding of any horn or signaling device on any automobile or other vehicle; except as a warning; the creation by means of any signaling device of any unreasonable, loud or harsh sound; the sounding of any signaling device for any unnecessary and unreasonable period of time; the unreasonable use of any signaling device which creates sound; and, the playing of car radios or other sound producing devices at a volume that is clearly audible more than fifty feet from the vehicle. The volume of the device shall not be louder than is necessary for the convenient hearing of persons who are inside the vehicle within which such a device is operated.~~

~~(2) (A) Any noise of a continuous or intermittent nature which persists for a period of fifteen minutes and can be heard by any person outside the immediate premises from the location of the emitter and is caused by the using, operating or permitting to be played, use or operation of any radio, television, tape or record player, amplifier, musical instrument or other machine or device used for the production, reproduction or emission of sound, or any prolonged sounds by people, or by any animal or bird so as to disturb the public peace, quiet and comfort of the neighboring inhabitants.~~
~~(B) Any person making a complaint under this section shall be required to give the person's name to the enforcement officer upon requesting an investigation. The person shall also be required to sign a complaint after an investigation is made and before any further action under Section 14.09.080 is taken; otherwise no further action will be undertaken.~~

14.09.090 14.09.060 Enforcement.

~~This chapter shall be enforced by:~~

~~(a) The This chapter shall be enforced by the mayor, or his or her duly authorized representative, the Bloomington Police Department and/or civil servants, appointed with the approval of the common council, whose duties shall include, but not be limited to, investigation, study and/or measurement of sound pressure levels in and for the city of Bloomington.~~

~~(b) Each person charged with enforcement of this chapter shall have the power and authority to issue all orders and give notice of violations as are designated under this chapter. Such person, or persons, shall keep complete and accurate records. For purposes of enforcement, any non-police officer who seeks enforcement of Section 14.09.050(c) must be accompanied by a police officer who shall make all requests to stop of moving vehicles. Non-police officers, who seek to enforce the provisions of this chapter, may not stop moving vehicles.~~

14.09.100 14.09.070 Violations, penalties and appeals.

~~(a) Those Any person charged with violating noise limits in the provisions of this chapter may, in the discretion of the enforcement officer, be issued an official warning advising them of their violation of the provisions of this chapter. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this chapter's provisions. An official warning shall be issued by any person charged with enforcing this chapter~~

~~(a) (b) Any person violating any of the provisions of this chapter, shall, upon a written finding of violation signed by the enforcement officer, be subject to a an initial penalty of fifty dollars. Each day such violation is committed or permitted to continue shall constitute a separate offense. A second violation in any twelve month period is subject to a fine or penalty of one hundred dollars and subsequent violations within a twelve month period are subject to a fine or penalty of five hundred dollars.~~

~~(b)~~ (c) Upon written findings of a violation by the same person for the same offense three times within a consecutive twelve-month period, when such noise is created by the same noise emitter or same type of noise emitter, the noise creating device may be ordered by the enforcement officer to cease being used or operated until it can be brought into compliance with this chapter.

~~(e)~~ (d) Any person issued a written notice of violation of this chapter shall pay ~~to the Bloomington city controller as a penalty for, and in full satisfaction of such violation, the sum of fifty dollars~~ the total amount of the penalty to the City of Bloomington within seven days of such notice, unless such notice is appealed in conformity with Section ~~14.09.100(d)~~ 14.09.070(e).

~~(d)~~ (e) All appeals from written finding of the enforcement officer must be taken, within seven days, to ~~an appeal board composed of one member each from the Bloomington environmental commission, plan commission and board of public safety, each member selected by the respective group. The mayor shall also appoint two persons with knowledge and experience in the study and investigation of sound and its effects. The members of the appeal board shall serve without compensation and shall be designated by September 1st of each year and shall only be appointed for one year.~~ the Board of Public Works.

~~(e)~~ (f) All appeals from written findings of the ~~appeal board~~ Board of Public Works shall be made to courts of competent jurisdiction within seven days.

~~(f)~~ (g) Upon failure to appeal an adverse finding or failure to comply with a written order or assessed penalty, the city ~~attorney's office~~ Legal Department shall be empowered to take all appropriate action necessary to enforce the written findings of the enforcement officer or of the ~~appeal board~~ Board of Public Works.

14.09.110 14.09.080 Severability.

~~If any provision, clause, sentence, or paragraph of this chapter, or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or applications of the provisions of this chapter which can be given effect without the invalid provisions or applications, and, to this end, the provisions of this chapter are declared to be severable.~~