

FILED
CITY CLERK

2022 APR 22 P 1:57

UZO Amendment #130-a (January 2022)

CINDY MURRAY

ORDINANCE NO. 2022-16

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF
TIPPECANOE COUNTY, INDIANA**

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA, THAT THE UNIFIED ZONING ORDINANCE OF TIPPECANOE COUNTY, INDIANA, BEING A SEPARATE ORDINANCE AND PART OF THE MUNICIPAL CODE OF LAFAYETTE, INDIANA, IS HEREBY AMENDED AS FOLLOWS:

Section 1: Change **UZO Section 3-2 Permitted Use Table** by adding the following footnote to SIC 4225 "Self-storage Warehouse Business":

Footnote 72: Proposed **self-storage warehouse businesses** located in a zone where they are permitted by right, but on property within an urbanized, sewerred area as shown in Appendix A, shall be required to obtain a special exception.

This ordinance shall be in full force and effect from and after its passage.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA, THIS _____ DAY OF _____, 2022.

ATTEST:

Perry Brown, Presiding Officer

Cindy L. Murray, City Clerk

Presented by me to the Mayor of the City of Lafayette, Indiana, on the _____ day of _____, 2022.

Cindy L. Murray, City Clerk

This Ordinance approved and signed by me on the _____ day of _____, 2022.

Tony Roswarski, Mayor

ATTEST:

Cindy L. Murray, City Clerk



Area Plan Commission of Tippecanoe County, Indiana

April 22, 2022
Ref. No.: 2022-076

Lafayette City Council
20 N. 6th Street
Lafayette IN 47901

CERTIFICATION

**RE: UZO AMENDMENT #103-a Self-Storage Warehouses in
Urbanized Areas**

Dear Lafayette City Council members:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on April 20, 2022, the Area Plan Commission of Tippecanoe County voted **2 yes - 13 no** on a motion to recommend approval of a proposed amendment to the Unified Zoning Ordinance labeled **UZO Amendment 103-a (April 2022)**, and attached herein. Therefore, the Area Plan Commission of Tippecanoe County forwards to the Lafayette City Council an **unfavorable recommendation** relative to **UZO Amendment 103-a (April 2022)**.

Sincerely,

David Hittle
Executive Director

DH/jae

Enclosure: Staff Report and Ordinances

Unified Zoning Ordinance Amendment #103-A SELF-STORAGE WAREHOUSES IN URBANIZED AREAS

Staff Report
April 14, 2022

This discussion started with a permit to convert the old Coke Bottling Plant between Union and Salem, which had been a fine example of art deco styling, into a self-storage warehouse business. Self-storage businesses serve a good purpose; from a business owner's perspective, with low overhead costs and a limited number of employees, it is an easy way to generate income. Located on highways or arterials on the edges of town, they are considered good neighbors compared to other commercial uses: they're quiet, they don't generate a considerable amount of traffic, there are no odors created, and no overflow of parked cars. However, in the wrong location, such as a downtown or near downtown neighborhood, they can strip vitality and vibrancy from an area. This is the exact opposite of what planners want to see occur in a downtown.

In 1981, the BZA heard and approved a special exception for our first "mini-warehouse" (BZA-483 Herman Andre'). Since that time, the rules have tightened; UZO Amendment #92 in 2017, eliminated the special exception in the A zone and simply prohibited them. It also added requirements that these businesses provide bufferyards. (It should be noted here that this amendment created at least six legally nonconforming self-storage businesses in the A zone.) Over a relatively short 40-year period, these businesses have proliferated, mostly locating in Lafayette and on the outskirts of our cities.

In early November 2021, at the Administrative Officer's (A.O.'s) Meeting, representatives from the Lafayette Redevelopment Office brought their concern regarding self-storage businesses to staff's attention. The re-use of the former Coke Bottling Plant served as the impetus for redevelopment staff to request a change to the UZO to preserve the urban core for uses more lively than self-storage. This use generates little to no pedestrian traffic and in the city's opinion, is not the best use in a downtown neighborhood. A proposed amendment was decided upon that would use the existing "urbanized, sewerred area" maps from the UZO's Appendix. It would change the Use Table by prohibiting these businesses from locating within the areas on these maps (generally our downtowns and pre-WWII neighborhoods). The A.O.'s and redevelopment staff agreed to this proposal.

This amendment was brought to Ordinance Committee in December 2021. At that meeting, the committee decided that the proposal went "too far" in eliminating self-storage within the urbanized area and asked staff to revise it. After discussing a revision with the Lafayette Redevelopment Office, in January 2022, staff brought to Ordinance Committee a revised amendment that would allow self-storage businesses within the urbanized areas only with the grant of a special exception. This revised amendment was approved by the Ordinance Committee at the January meeting by voice vote.

(Originally this amendment covered two completely different issues that Ordinance Committee was debating at the same time: self-storage businesses and home occupations. Ordinance Committee voted to approve the home occupations portion of this amendment in February, so with both issues decided and approved, they were both included in UZO Amendment #103 on the March APC agenda. Two weeks prior to the March APC meeting, the Ordinance Committee re-opened discussion on further changes to this already decided amendment and the self-storage portion of Amendment #103 [although already advertised for public hearing at the March APC meeting] was dropped from the request. Amendment #103, revisions to home occupations, was approved by APC in March, which leaves this portion of the amendment, now known as Amendment #103 - A, self-storage warehouse businesses, on the April APC agenda.)

At both March and April Ordinance Committee meetings it became clear that committee members had only one problem with the amendment. That problem was that it would create legally nonconforming uses of any existing self-storage businesses in the urbanized area as well as the newest business that served as the catalyst for this amendment. At the March meeting, the committee requested staff come up with a way to require future special exceptions for this use, and for an expansion of this use, while making all existing self-storage businesses in the urbanized area not "legally nonconforming," but simply, "conforming."

But is an existing use without a required special exception the same as an existing use located in a zone where it is not allowed? UZO Section 5-1-1 would suggest they are the same thing:

"Nonconforming uses...were lawful uses...before this ordinance became effective or was amended, but now they either:

- 1) Are prohibited in the zone in which they are located; or
- 2) ***Fail to meet current regulations or restrictions under this ordinance or its amendments;***
- 3) Or both." (*emphasis added*)

Staff's problem with the committee's requested revision is that it is a slippery slope. The point of legally nonconforming uses is that these undesirably located uses have a legal right to remain as they were before the ordinance was adopted, but eventually, in time, the use would go away and conforming uses would come in. That is a foundational principle of zoning. If we allow this type of business to be conforming, although new self-storage businesses would have to get a special exception, where do we draw the line? Junk yards are permitted in the I3 zone by right; if one has been located in an R1 or A zone since 1998, and the owner cannot get the property rezoned to I3, would we make this use conforming as well? Billboards along our scenic byways? A mobile home in the Flood Plain?

Section 6-4-4 (g) of the UZO states that, "A grant of special exception is unnecessary for a use authorized by 3-2 above *if that use existed on the effective date of this ordinance or pertinent amendments to it.* However, this subsection does not authorize the expansion of such a use if it involves the enlargement of a building, structure, or land area." Again, this section of the UZO is giving the basis for legal nonconformity.

The wording that the Ordinance Committee came up with and approved by unanimous voice vote at the April meeting was added to the original amendment wording and is shown highlighted below:

Footnote 72: Proposed ***self-storage warehouse businesses*** located in a zone where they are permitted by right, but on property within an urbanized, sewerred area as shown in Appendix A, shall be required to obtain a special exception, **except for those businesses that have already received an *Improvement Location Permit* at the time of the adoption of this amendment which would continue to operate in a "by right" status but would not be allowed to further expand the use without first obtaining a special exception.**

Staff cannot support this wording addition.

Attached to this report are two UZO amendments: the first is the amendment that received the Ordinance Committee's approval (as well as the City of Lafayette's approval) in January 2022. Also attached is the proposal the Ordinance Committee passed in April with the additional wording labeled UZO Amendment #103-a April 2022.

STAFF RECOMMENDATION:

Approval of the original January 2022, Ordinance Committee-approved amendment.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTERS 3 & 5
OF ORDINANCE NO. _____
BEING THE UNIFIED ZONING ORDINANCE
OF TIPPECANOE COUNTY.**

Be it ordained by the (County Commissioners of Tippecanoe County, Indiana; the Common Council of the City of Lafayette, Indiana; the Common Council of the City of West Lafayette, Indiana; the Town Council of the Town of Battle Ground, Indiana; the Town Council of the Town of Dayton, Indiana; and the Town Council of Clarks Hill, Indiana), that Ordinance No. _____, being the Unified Zoning Ordinance of Tippecanoe County is hereby amended as follows:

Section 1: Change **UZO Section 3-2 Permitted Use Table** by adding the following footnote to SIC 4225 "Self-storage Warehouse Business":

Footnote 72: Proposed ***self-storage warehouse businesses*** located in a zone where they are permitted by right, but on property within an urbanized, sewerred area as shown in Appendix A, shall be required to obtain a special exception.

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