

TITLE XV: LAND USAGE

Chapter

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CHAPTER 150: UNSAFE BUILDINGS

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§ 150.01 ESTABLISHMENT.

Under the provisions of I.C. 36-7-9-3, there is established the “Edgewood Unsafe Building Ordinance.”

(Prior Code, § 151.01) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.02 ADOPTION OF STATE LAW.

I.C. 36-7-9-1 through 36-7-9-9-28, as modified herein, are adopted by reference as part of this chapter, together with any and all amendments thereto that are made following this date. All proceedings

in the town for inspection, repair, and removal of unsafe buildings shall be governed by said state law and the provisions of this chapter.

(Prior Code, § 151.02) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Includes **STRUCTURE** and shall be construed as if followed by the words “or part thereof.”

DEPARTMENT. The office of the Building Commissioner of the town, which shall administer this chapter.

ENFORCEMENT AUTHORITY. The Building Commissioner of the town.

HEARING AUTHORITY. The Town Council.

PERSONS. Includes a corporation or an unincorporated association.

SUBSTANTIAL PROPERTY INTEREST. Any right in real property in the town that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate, a future interest, a present possessor’s interest, or an equitable interest of a contract purchaser. The **INTEREST** reflected by a deed, lease, license, mortgage, land sale contract, or lien is not a substantial property interest, unless the deed, lease, license, mortgage, land sale contract, lien, or evidence of it is:

(1) Recorded in the office of the County Recorder; or

(2) The subject of a written information that is received by the Building Commissioner and includes the name and address of the holder of the interest described.

UNSAFE BUILDING and **UNSAFE PREMISES.** An unsafe building or structure, or any part of a building or structure, is:

(1) Considered an **UNSAFE BUILDING** if it is:

(a) In an impaired structural condition that makes it unsafe to a person or property;

(b) A fire hazard;

(c) A hazard to the public health;

(d) A public nuisance;

(e) Dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or

(f) Vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance.

(2) Considered an *UNSAFE PREMISES* if it is:

(a) An *UNSAFE BUILDING*; and

(b) The tract of real property on which the *UNSAFE BUILDING* is located.

(Prior Code, § 151.03) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.04 ORDER OF ENFORCEMENT AUTHORITY.

The Building Commissioner shall issue an order requiring action relative to any unsafe premises, in accordance with standards established by ordinance, including:

(A) Vacating of an unsafe building;

(B) Sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;

(C) Extermination of vermin in and about the unsafe premises;

(D) Removal of trash, debris, fire hazardous material, or a public health hazard in and about the unsafe premises;

(E) Repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance prescribed by law;

(F) Demolition and removal of part of an unsafe building;

(G) Demolition and removal of an unsafe building, if:

(1) The general condition of the building warrants removal; or

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(2) The building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order.

(H) Requiring, for an unsafe building that will be sealed for a period of more than 90 days:

(1) Sealing against intrusion by unauthorized persons and the effects of weather;

(2) Exterior improvements to make the building compatible in appearance with other buildings in the area; and

(3) Continuing maintenance and upkeep of the building and premises.

(Prior Code, § 151.04) (Ord. 12-13-1992 A, passed 12-23-1992)

§ 150.05 NOTICE OF ORDER.

(A) (1) Notice of order shall be given by:

(a) Sending a copy of the order by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested.

(b) Delivering a copy of the order personally to the person to be notified; or

(c) Leaving a copy of the order at the dwelling or usual place of abode of the person to be notified.

(2) If, after a reasonable effort, service is not obtained by a means described above, service shall be made by publishing a notice of the order or statement, in accordance with I.C. 5-3-1, in the county where the unsafe premises are located. However, publication may be made on consecutive days.

(B) When service is made by any of the means described in this section, except by mailing or by publication, the person making service shall make an affidavit stating that he or she has made the service, the manner in which service was made, to whom the order was issued, the nature of the order, and the date of service. The affidavit must be placed on file with the enforcement authority.

(C) The date when notice of the order is considered given is as follows.

(1) If the order is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person, or left at his or her dwelling or usual place of abode.

(2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

(3) Notice by publication is considered given on the date of the second day that publication is made.

(D) The order supersedes any permit relating to building or land use, whether this permit is obtained prior to or after the order is issued.

(E) Notice of a rescission and notice of continued hearings shall be given in the same manner as notice of order.

(F) All orders expire two years from the date notice of order is given, except as provided by statute. (Prior Code, § 151.05) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.06 CONTENT OF NOTICE.

(A) The notice must contain:

(1) The name of the person to whom the order is issued;

(2) The legal description or address of the unsafe premises that are the subject of the order;

(3) The action that the order requires;

(4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is approved;

(5) A statement indicating the exact time and place of the hearing before the Town Council and stating that the person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present argument; but that, in the event the person to whom the notice is addressed fails to appear, the Town Council shall approve the order without hearing on proposed order;

(6) A statement briefly indicating the action which can be taken by the enforcement authority of the order, after approval by the Council, if the person to whom the order is addressed fails to comply with the order;

(7) A statement indicating the obligation created by I.C. 36-7-9-27 relating to notification of subsequent interest holders and the enforcement authority; and

(8) The name, address, and telephone number of the enforcement authority.

(B) The date of hearing on any order issued by the Building Commissioner shall not be sooner than ten days after date of service.

(Prior Code, § 151.06) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.07 HEARING.

(A) A hearing must be held by the Town Council relative to each order of the enforcement authority, and such order shall have no force or effect until such hearing. Such hearing will not be had until at least ten days after notice to the individual to whom the order is addressed, except under the provisions under § 150.09 or unless the individual to whom the order is addressed requests an earlier date in writing. The hearing shall be held on a business day. The hearing shall be continued by the Town Council pursuant to I.C. 36-7-9-7(b), and notice of such continuance, including the new date of hearing, shall be given to the person to whom the order was sent pursuant to § 150.05. Notice of date of continued hearing shall be given to the person to whom the order was issued not less than five days before the continued hearing date.

(B) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings shall appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments, the amount of said bond to have been determined pursuant to I.C. 36-7-9-7(f).

(C) The Town Council shall allow sufficient time, of at least ten days from date of hearing, to comply with the order (or the order as amended). If the Council allows more than 30 days to comply from date of hearing to comply with order, the order (or the amended order) shall require that a substantial beginning be made toward complying with said order within 30 days (but not earlier than ten days).

(D) If, at a hearing, a person to whom an order has been issued requests an additional period to comply with the order, and shows good cause for this request to be granted, the Town Council may grant the request. However, as a condition for allowing the additional period, the Town Council may require that the person post a performance bond to be forfeited if the compliance with the order is not completed within the additional period.

(E) At the conclusion of any hearing on the order conducted by the Town Council, it shall make findings and take action to:

(1) Affirm the order;

(2) Rescind the order; or

(3) Modify the order, but unless the person to whom the order was issued, or counsel for that person is present at the hearing, the Town Council shall modify the order only in a manner that makes its terms less stringent.

(Prior Code, § 151.07) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.08 WILLFUL FAILURE TO COMPLY WITH ORDER.

(A) In the event the Building Commissioner reports to the Town Council that a person who has received an order from him or her, affirmed by the Council, under the terms of this chapter, has willfully failed to comply with the order, the Town Council shall set a place, date, and time of a hearing upon said report and shall give notice setting forth the report of the Building Commissioner to the person to whom the initial order was issued, notice to be given to the individual in the same manner as the original order was given to him or her.

(B) At the hearing, the Town Council may find that there is not sufficient evidence to determine that there has been a willful failure to comply with the order, or that the order has been complied with at the time of said hearing, at which time the Town Council will enter in the record that:

(1) At the time of the hearing, the person has complied with the order and therefore no penalty is imposed; and

(2) There is not sufficient evidence to determine there is a willful failure to comply with the order and therefore no penalty is imposed, however, the Council shall set a date upon which compliance must be completed, no earlier than 15 days from said hearing.

(C) In the event that the Building Commissioner, in writing, reports the said person has not complied with the order after 15 days, the Town Council shall therefore set another hearing and notice thereof shall be given to said person in the same manner with the same information as the original given in the instance of that person's failure to comply. At the second meeting and any subsequent meeting, the Town Council may make the same findings as after the first hearing, and in the event the Town Council finds that there is a failure to comply but lacks sufficient information to determine that it is willful, it may again continue the time period for compliance.

(D) There is a willful failure on the part of the person receiving such order to comply with the order. In the event, however, the Town Council finds that there is a willful failure on the part of the person receiving such order to comply with the order, the Council shall impose a civil penalty as set forth in § 10.99.

(Prior Code, § 151.08) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.09 RECORD OF FINDINGS.

The record of the findings made and action taken by the Town Council at any hearing herein provided shall be made available to the public upon request. However, neither the Town Council nor the Building Commissioner is required to give any person notice of the findings and action. (Prior Code, § 151.09) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.10 EMERGENCY ACTION.

(A) If the Building Commissioner finds it necessary to take emergency action concerning an unsafe premises in order to protect life, safety, or property, it may take that action without issuing an order of giving notice. Such emergency action shall be limited to removing any immediate danger, as provided in I.C. 36-7-9-9.

(B) The Town Council shall recover any costs incurred by the Building Commissioner in taking emergency action by filing a civil action in the Circuit or Superior Court of the county against the person who holds fee interest or life estate interest in the unsafe premises at the time the Building Commissioner found it necessary to take emergency action. (Prior Code, § 151.10) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.11 ACTION TO ENFORCE ORDERS.

(A) The Building Commissioner shall cause the action required by an order issued under § 150.04(B), (C), and (D) to be performed by a contractor if:

- (1) The order has been served in a manner provided in this chapter to each person having a fee interest or life estate in the unsafe premises that are subject to the order;
- (2) The order has been duly affirmed by the Town Council;
- (3) The order was not complied with; and/or
- (4) The order is not being reviewed by any court.

(B) The Building Commissioner shall cause the action required by said order, other than under § 150.04(B), (C), and (D), to be performed if:

- (1) An order has been served on each person having a substantial property interest in the unsafe premises that are the subject of this order;

(2) The order has been affirmed or modified by the Town Council (and if amended, has still ordered said persons to comply with the amended order), after a hearing thereon in such a manner that all persons having a substantial interest in the unsafe premises are the subject of the order which has been affirmed, amended, or modified by the Town Council;

(3) The order, as affirmed or modified at the hearing, has not been complied with; and/or

(4) The order is not being reviewed by any court.

(C) However, in addition to the requirements hereinabove set forth, the Building Commissioner shall notify each person having a fee interest or life estate in the unsafe premises, or who is subject of the order, or all persons having a substantial property interest in the unsafe premises, that he or she intends to proceed and cause compliance with said order, and notice of which shall be given to said persons in the same manner that notice of the order was initially given to said individual, which notice shall specifically state that the Building Commissioner intends to perform the work.

(Prior Code, § 151.11) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.12 PERFORMANCE OF WORK ORDER; BIDS AND NOTIFICATIONS.

(A) The work required by an order of the Building Commissioner shall be performed in the following manners.

(1) If the work is being performed under an order other than an order to seal an unsafe building, and if the cost of the work is estimated to be less than \$5,000, the office of the Building Commissioner, acting through the Building Commissioner or any other agent, shall perform the work by means of the town's own workers and equipment, owned or leased by it. Notice that this work is to be performed must be given to all persons having a substantial interest in the property as heretofore defined in this chapter, at least ten days before the date of performance of the work by the office of the Building Commissioner is to begin. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the Building Commissioner in processing the matter and performing the work shall, if not paid, be recorded after a hearing as a lien against all persons having a fee interest or life estate in the unsafe premises.

(2) If the work is being performed under an order other than that of an unsafe building, and if the estimated cost of the work is \$5,000 or more, this work must be let at public bid to a contractor licensed and qualified under law. (The obligation to pay costs incurred by I.C. 36-7-9-27.) This chapter is based on the condition of the unsafe premises at the time the public bid is accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted did not eliminate or diminish this obligation, as set forth in I.C. 36-7-9-11.

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(3) If the work is performed under an order issued under § 150.05(A)(2), (A)(3), and (A)(4), the work shall be performed by a contractor who has been awarded a base bid contract to seal unsafe buildings by the Building Commissioner or the office of the Building Commissioner using its own workers and equipment owned or leased by it. The unsafe building shall be sealed without further notice to the persons holding the fee interest or life estate, and these persons are liable for the costs incurred by the enforcement authority in processing the matter and performing the work which is hereinafter provided.

(B) Bids shall be solicited and accepted for work on more than property if the bid reflects an allocation of the bid amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributed to each of the unsafe premises constituted the basis for calculating the part of the cost is as hereinafter stated.

(C) All persons who have a substantial property interest in the unsafe premises and are subject to an order other than the order under § 150.05(A)(2), (A)(3), and (A)(4) must be notified in the manner herein provided for the service of the initial order by means of a written statement including:

- (1) The name of the person to whom the order was issued;
- (2) A legal description or address of the unsafe premises that are the subject of the order;
- (3) A statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;
- (4) A description of work to be accomplished;
- (5) A statement that both the bid price of the licensed contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the Building Commissioner in processing the matter of the unsafe premises shall, if not paid, be recorded after a hearing as a lien against all persons having a fee interest or life estate interest in the unsafe premises;
- (6) The time of the bid opening;
- (7) The place of the bid opening; and
- (8) The name, address, and telephone number of the Building Commissioner.

(D) If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required in division (C) above, except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid shall be obtained from the Building Commissioner.

(E) Notice of the statement that public bids are to be let must be given at least ten days before the date of the public bid to all persons having a substantial interest in the property, and are subject to an order other than the order to seal unsafe premises.

(F) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the Building Commissioner has received information in writing that enables him or her to make service as provided in I.C. 36-7-9-25 than publication as hereinabove set forth in this chapter.
(Prior Code, § 151.12) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.13 LIABILITY FOR COSTS.

(A) When action required by an order is performed by the Building Commissioner, or by a contractor as hereinabove provided, each person who held a fee interest or life estate interest in the unsafe premises from the time when the order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for the following costs:

(1) The actual cost of the work performed by the Building Commissioner or by the contractor;

(2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the Building Commissioner in taking the technical, administrative, and legal actions concerning typical unsafe premises that are necessary under this chapter so that the action required by an order shall be performed by a contractor as herein provided. In calculating the amount of the average processing expense, the following cost shall be considered:

(a) The cost of obtaining reliable information about the identification and location of persons who own a substantial property interest in the unsafe premises;

(b) The cost of notice of orders, notices of statements of rescission, notice of hearing by the Town Council, or of continued hearing, notice of statement that public bids are to be let or that the Building Commissioner intends to accomplish the work, and notice that a hearing shall be held on the amounts indicated in the record;

(c) Salaries for employees;

(d) The costs for supplies, equipment, and office space. The Town Council, having control of the office of the Building Commissioner, shall determine the amount of the average processing expense at a public hearing, after notice has been given in the same manner as required by other official action of the Council. In determining the average processing expense, the Council shall fix the amount at a full dollar amount that is an even multiple of ten; and

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(e) If all or any part of the costs listed above remain unpaid for any unsafe premises for more than 15 days after the completion of the work, and if the Building Commissioner determines that there is a reasonable probability of obtaining recovery, the Commissioner shall prepare a record stating:

1. The name and last known address of each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time the order requiring the work to be performed was recorded to the time that the work was completed;
2. The legal description of, or address of, the unsafe premises that were the subject of work;
3. The nature of the work accomplished;
4. The amount of the unpaid bid price of the work that was accomplished; and
5. The amount of unpaid average processing expense. The record must be in a form approved by the State Board of Accounts.

(B) The Building Commissioner shall swear to the accuracy of the record before the Clerk of the Circuit Court and deposit the record in the Clerk's Office. Notice that the record has been filed, and that a notice on the amounts indicated in the record shall be held, must be sent to the persons named in the record, such notice to be given as hereinabove provided notice was given of the order made.

(C) If, within 30 days after the notice herein required, a person named by the record files with the Clerk of the Circuit Court a written petition objecting to the claim for payment and requesting a hearing, the Clerk shall enter the cause on the docket of the Circuit or Superior Court as a civil action, and a hearing shall be held on the question in the manner prescribed by law. However, issues that could have been determined by appeal to any court prior to that time may not be entertained at the hearing. At the conclusion of the hearing, the Court shall either sustain the petition or enter judgment against the persons named in the record for the amounts recorded or modified amounts.

(D) If no petition is filed, the Clerk of the Circuit Court shall enter the cause on the docket of the Court, and the court shall enter a judgment for the amounts stated in the record.

(E) A judgment entered pursuant to this chapter to the extent that it is not satisfied is a debt and lien on all real and personal property of the person named or a joint and several debt and lien on the real and personal property of the persons named. The lien on real property is perfected against all creditors and purchasers when the judgment is entered on the judgment docket of the court. The lien on personal property is perfected by filing a lis pendens notice in the appropriate filing office as provided by state rules of trial procedure.

(F) Judgments entered under this section shall be enforced in the same manner as other judgments are enforced.

(Prior Code, § 151.13) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.14 ESTABLISHMENT OF AN UNSAFE BUILDING FUND.

(A) Upon the request of the Building Commissioner, the Town Council shall establish in its operating budget a fund designated as the “Unsafe Building Fund.” Any balance remaining at the end of the fiscal year shall be carried over in the fund for the following year and does not revert to the General Fund.

(B) The provisions of I.C. 36-7-9-14 are incorporated into this section of the chapter by reference. (Prior Code, § 151.14) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.15 ISSUANCE OF INSPECTION WARRANTS.

(A) If the owners or those in possession of a building refuse inspection, the Building Commissioner shall obtain an inspection warrant from any court of record in the county in which the building is located in order to determine if the building is an unsafe building. The court shall issue the warrant subject to the following conditions.

(1) The Building Commissioner must establish that the building to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the building, or that there is probable cause for believing that a condition, object, activity, or circumstance legally justifies a search or inspection of that building.

(2) An affidavit establishing one of the grounds described in division (A)(1) above must be signed under oath or affirmation by the affiant.

(3) The court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.

(B) The warrant is valid only if it:

(1) Is signed by the judge of the court and bears the date and hour of its issuance above that signature, with a notation that the warrant is valid for only 48 hours after its issuance;

(2) Describes (either directly or by reference to the affidavit) the building where the search or inspection is to occur so that the executor of the warrant and owner of the possessor of the building can reasonably determine what property the warrant authorizes an inspection of;

(3) Indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

(4) Is attached to the affidavit required to be made in order to obtain the warrant.

(C) A warrant issued under this section is valid for only 48 hours after its issuance, must be personally served upon the owner or possessor of the building, and must be returned within 72 hours. (Prior Code, § 151.15) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.16 CIVIL ACTIONS REGARDING UNSAFE PREMISES.

The office of the Building Commissioner, acting through the Building Commissioner, shall bring a civil action regarding unsafe premises in the Circuit, Superior, or Municipal Court of the county. The office of the Building Commissioner is not liable for the costs of such an action. (Prior Code, § 151.16) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.17 RECORDING OF ORDERS.

The Building Commissioner shall record the documents specified in I.C. 36-7-9-26 in the office of the County Recorder. The Recorder shall not charge a fee for recording these items. (Prior Code, § 151.17) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.18 INTEREST IN UNSAFE PREMISES.

(A) A person who takes an interest in unsafe premises that are the subject of an order takes that interest, whether or not a hearing has been held, subject to the terms of the order, provided in I.C. 36-7-9-26 and subject to the provisions of said statutes.

(B) A person who takes an interest in unsafe premises that are the subject of a statement that public bids are to be let takes interest subject to the terms and conditions of that statement, all as provided, subject to the terms of I.C. 36-7-9-26. (Prior Code, § 151.18) (Ord. 12-23-1992 A, passed 12-23-1992)

§ 150.19 VIOLATIONS.

A person commits a violation who:

(A) Remains in, uses, or enters a building in violation of an order made under this chapter;

(B) Knowingly interferes with, or delays the carrying out of, an order made pursuant to the chapter;

(C) Knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or duty under this chapter; or

(D) Fails to comply with I.C. 36-7-9-27.

(Prior Code, § 151.98) (Ord. 12-23-1992 A, passed 12-23-1992)

CHAPTER 151: SUBDIVISION REGULATIONS

Section

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GENERAL PROVISIONS

§ 151.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALLEY. A permanent service way providing a secondary means of access to abutting lands.

BLOCK. A unit of property entirely surrounded by public highways, streets, railroad rights-of-way, waterways, or other barriers, or a combination thereof.

BUILDING LINE-BUILDING SETBACK LINE. The line across a lot establishing the minimum yard to be provided between the buildings and structures and the lot line or street right-of-way.

COMMISSION. The Town Plan Commission.

CUL-DE-SAC (COURT or DEAD END STREET). A short residential street having one end open to traffic and being permanently terminated by a vehicle turn-around.

EASEMENT. A grant by the property owner of the use of a strip of land by the public, a corporation, or persons, for specified purposes.

FRONTAGE. Property abutting on one side of a highway, and lying between the two nearest intersections or intercepting highways, or between the nearest intersecting or intercepting highway and railroad right-of-way, waterway, or other definite barrier.

JURISDICTION. The territory within the town.

LOT. A portion of a subdivision, or other parcel of land, intended as a unit for transfer of ownership or for development.

MASTER PLAN. The complete plan, or any of its parts, for the development of the town prepared by the Commission and adopted in accordance with I.C. 36-7-4-100 et seq., as amended, as is now or may hereafter be in effect.

PLACE. An open unoccupied, officially designated space, other than a highway or alley.

PLAT. A map or chart indicating the subdivision or resubdivision of land, intended to be filed for record.

STREET.

(1) A right-of-way, dedicated to the public use, which affords the principal means of access to abutting property.

(2) A ***STREET*** shall be designated as a highway, thoroughfare, parkway, boulevard, road, avenue, lane, drive, place, or other appropriate name.

(3) A ***STREET*** shall also be identified according to type of use, as follows.

(a) ***ARTERIAL STREETS.*** Streets designated for large volumes of traffic movement. Certain arterial streets shall be classified as ***BUSINESS STREETS*** to serve congested business sections,

and others as **LIMITED ACCESS HIGHWAYS** to which entrances and exits are provided only at controlled intersections and access is denied to abutting properties.

(b) **FEEDER STREETS**. Important streets planned to facilitate the collection of traffic from minor streets, and to provide circulation within neighborhood areas and convenient ways for traffic to reach arterial streets.

(c) **RESIDENTIAL STREETS**. Those streets determined primarily to provide access to abutting properties. Certain **RESIDENTIAL STREETS** shall be marginal access streets parallel to arterial streets, which provide access to abutting property and ways for traffic to reach access points on arterial streets. Other **RESIDENTIAL STREETS** shall be a cul-de-sac, a short street having one end open to traffic and being permanently terminated by a vehicle turn-around.

SUBDIVIDER. Any person responsibly engaged in developing or improving a tract or tracts of land which complies with the definition of a subdivision or defined in the section.

SUBDIVISION.

(1) The division of any parcel of land shown as a unit, part of a unit, or as contiguous units on the last preceding transfer of property into two or more parcels, sites, or lots, any one of which is less than five acres in area for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall not be considered a **SUBDIVISION**.

(2) The improvement of one or more parcels of land for residential, commercial, or industrial structure, or groups of structures involving the division, and a location of land as streets or other open spaces for common use by owners, occupants, or lease holders, or as easements for the extension and maintenance of public sewer, water, storm drainage, or other public facilities.

THOROUGHFARE PLAN. The part of the master plan, now or hereafter adopted, which sets forth the location, alignment, dimensions, identification, and classification of existing and proposed public streets, highways, and other thoroughfares.

(Prior Code, § 152.01) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.02 ESTABLISHMENT OF CONTROL.

No plat or replat of a subdivision of land located within the jurisdiction of the town shall be recorded until it shall have been approved by the Commission, and such approval shall have been entered in writing on the plat by the Chairperson of the Commission.

(Prior Code, § 152.02) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

PROCEDURE**§ 151.15 PRELIMINARY PLAT.**

Whenever the owner of any tract or parcel of land within the corporation limits of the town wishes to make a subdivision of same, he or she shall cause to be prepared a preliminary plat of the subdivision, and shall submit three copies of the preliminary plat, along with other information described herein, to the Commission for its preliminary study and action.

(Prior Code, § 152.15) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.16 PRELIMINARY CONSIDERATIONS.

(A) In order to make the most of the opportunities related to the subdivision, and to conserve time, effort, and expense, the owner or subdivider should consult with the Commission and public officials prior to the preparation of the preliminary plan of the subdivision. The Master Plan should be reviewed to determine how the proposed plan will fit into the Master Plan. Requirements of the thoroughfare plan, school, and recreational sites; shopping centers, community facilities; sanitation, water supply, and drainage; and relationship to other developments, existing and proposed, in the vicinity, should be determined in advance of the preparation of the subdivision plan. Consultation should also be held with those familiar with the economic factors affecting the subdivision. A thorough estimate of the situation will result in sound decisions with respect to the form, character, and extent of the proposed subdivision.

(B) No land shall be subdivided for residential use unless adequate access to the land over improved streets or thoroughfares exists or will be provided by the subdivider, or if such land is considered by the Commission to be unsuitable for such use by reason of flooding or improper drainage, objectionable earth and rock formation, topography, or any other feature harmful to the health and safety of possible residents and the community as a whole.

(Prior Code, § 152.16) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.17 APPLICATION FOR PRELIMINARY APPROVAL.

(A) A person desiring preliminary approval of a plat of a subdivision of any land lying within the jurisdiction of the Commission shall submit a written application to the Commission.

(B) The application shall be accompanied by the following information and plans:

(1) A location map, which does not need to be a special drawing. The data may be shown by notations on available maps. However, what must be shown is the:

- (a) Subdivision name and location;
- (b) Any thoroughfares related to the subdivision;
- (c) Public transportation lines;
- (d) Main shopping center;
- (e) Community or neighborhood stores;
- (f) Elementary and high schools;
- (g) Parks and playgrounds;
- (h) Other community features; and
- (i) Title, scale, north point, and date.

(2) A site map showing:

(a) Topographical data in one of the following forms, which shall be determined by the Commission during preliminary consideration of the plan:

1. A contour map with contours at vertical intervals of two feet if the general slope of the site is less than 10%, and at vertical intervals of five feet if the general slope is greater than 10%; and

2. A land inspection sketch showing terrain features, wooded areas, buildings, and other natural or artificial features which would affect the plan of the subdivision.

(b) Tract boundary lines, showing dimensions, bearings, angles, and references to sections, township, and range lines or corners;

(c) Streets and rights-of-way, on or adjoining the site, including dedicated widths, roadway widths, approximate gradients, types, and widths of pavements, curbs, sidewalks, tree planting, and other pertinent data;

(d) Easements, locations, widths, and purposes;

(e) Utilities, including sanitary and storm sewer, other drainage facilities; water lines, gas mains; electric utilities and other facilities. The size or capacity of each should be shown, and the locations of, or distance to, each existing utility indicated;

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- (f) Zoning of the site and adjoining property;
 - (g) Existing or proposed platting of adjacent land;
 - (h) Other features or conditions which would affect the subdivision favorably or adversely;
- and
- (i) Title, scale, north point, and date.

(3) A preliminary plat of the subdivision, drawn to scale of 50 feet to one inch or 100 feet to one inch, provided however, that if the resulting drawing would be over 36 inches in shortest dimension, a scale as recommended by the Commission shall be used. The preliminary plat shall show:

- (a) The proposed name of the subdivision;
- (b) Names and addresses of owner and subdivider and the city planner, land planning consultant, engineer, or surveyor who prepared the plan;
- (c) Streets and rights-of-way on and adjoining the site of the proposed subdivision, showing the names and including the roadway widths, approximate gradients, types, and widths of pavement, curbs, sidewalks, crosswalks, tree-planting, and other pertinent data;
- (d) Layout of lots, showing dimensions and numbers;
- (e) Parcels of land proposed to be dedicated or reserved for schools, parks, playgrounds, or other public or semi-public or community purposes;
- (f) Building setback or front yard lines;
- (g) Location and approximate size or capacity of utilities to be installed;
- (h) Tract boundary lines showing dimensions, bearings, angles, and references to known land lines;
- (i) Contours at vertical intervals of two feet if the general slope of the site is less than 10% and at vertical intervals of five feet if the general slope is 10% or greater;
- (j) Key plan, legend, and notes; and
- (k) Scale, north point, and date.

(4) The information called for in divisions (B)(2) and (B)(3) above shall be submitted as one or two maps or plans;

(5) A description of the protective covenants or private restrictions to be incorporated in the plat of the subdivision;

(6) Information as to any agreements which have been entered into with the owners of other property within the neighborhood in which the proposed subdivision is located, as to the general plans for the entire neighborhood. Reference should be made to the master plan for suggestions as to the general street pattern and design of the neighborhood. Wherever possible, all of the property owners within the neighborhood should endeavor to agree upon a general plan for its development, in order that each subdivision shall be designed as an integral part of a well considered overall plan; and

(7) The application shall be accompanied by a certified check or money order in the amount of \$10 plus \$1 for each lot in the proposed subdivision with a minimum total charge of \$15 to cover the cost of checking and verifying the proposed plat, and such amount shall be deposited in the General Fund.

(Prior Code, § 152.17) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.18 PRIMARY APPROVAL.

After an application for approval of a plat of a subdivision, together with three copies of all maps and data has been filed, the Commission shall review the preliminary plat and give its approval, or return the plan to the subdivider with suggestions for changes. No application will be considered at a meeting unless it has been filed with the Commission at least ten days before the date of such meeting. After the Commission has given approval, it shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat. The cost of publication of the notice of hearing shall be set by the applicant.

(Prior Code, § 152.18) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.19 FINAL PLAT.

(A) Following the hearing on the preliminary plat, the Commission will notify the applicant in writing that it is ready to receive the final plat, or will advise the applicant of any further changes in the preliminary plat which are desired or should have consideration.

(B) The final plat shall meet the following specifications.

(1) The plat may include all or only a part of the plat submitted for approval.

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(2) The original drawing of the plat of the subdivision shall be drawn to a scale of 50 feet to one inch, provided that if the resulting drawing would be over 36 inches in shortest dimension of a scale of 100 feet to one inch shall be used. Three black or blue line prints shall be submitted with the original final plat, or, in order to conform to modern drafting and reproducing methods, lettering shall be applied to the final plat in a manner which will permit the plat to be reproduced by film litholoid or other suitable photographic process at the designated scale, and in which case, three black line prints and a reproducible print shall be submitted.

(3) The following basic information shall be shown:

(a) Accurate boundary lines, with dimensions and angles, which provide a survey of the tract, closing with an error of not more than one foot in 5,000 feet;

(b) Accurate distances and directions to the nearest established street corners or official monuments. Reference corners shall be accurately described on the plan;

(c) Accurate locations of all existing and recorded streets intersecting the boundaries of the tract;

(d) Accurate metes and bounds description of the boundary;

(e) Source of title to the land as shown by the books of the County Recorder;

(f) Street names;

(g) Complete curve notes for all curves included in the plan;

(h) Street lines with accurate dimensions in feet and hundredths of feet, with angles to street, alley, and lot lines;

(i) Lot numbers and dimensions;

(j) Easements for utilities and any limitations on such easements;

(k) Accurate dimensions for any property to be dedicated or reserved for public, semi-public, or commercial use;

(l) Building setback or front yard lines and dimensions;

(m) Location, type, material, and size of all monuments and lot markers;

(n) Restrictions of all types which will run with the land and become covenants in the deeds for lots;

(o) Name of the subdivision;

(p) Name and address of the owner and subdivider;

(q) North point, scale, and date;

(r) Certifications by a registered professional engineer or registered land surveyor; and

(s) Certificate for approval by the Commission.

(4) Engineering plans showing:

(a) Profiles, typical cross-sections, and specifications for proposed street improvements; and

(b) Profiles and locations, and other explanatory data, concerning the installation of sanitary and storm sewerage systems, and a water distribution system.

(Prior Code, § 152.19) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.20 FINAL PLAT APPROVAL.

(A) When the final plat is submitted to the Commission, it shall be accompanied by a notice from the Town Council stating that there has been filed with, and approved by, that body one of the following:

(1) A certificate that all improvements and installations for the subdivision required for its approval have been made or installed in accordance with specifications; or

(2) A bond which shall:

(a) Run to the Town Council;

(b) Be in an amount determined by the Commission to be sufficient in amount to complete the improvements and installations in compliance with this chapter;

(c) Be with surety satisfactory to the Commission; and

(d) Specify the time for the completion of the improvements and installations.

(B) After a public hearing and within a reasonable time after application for approval of the plat, the Commission shall approve or disapprove it. If the Commission approves, it shall affix the Commission's seal upon the plat together with the certifying signature of its president and secretary. If it disapproves, it shall set forth its reasons in its own records and provide the applicant with a copy. (Prior Code, § 152.20) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.21 PRINCIPLES AND STANDARDS.

(A) The final plat of the subdivision shall conform to the following principles and standards of design.

(1) *General.* The subdivision plan shall conform to the principles and standards which are generally exhibited in the Master Plan.

(2) *Streets.*

(a) The street and alley layout shall provide access to all lots and parcels of land within the subdivision, and where streets cross other streets, jogs shall not be created.

(b) Proposed streets shall be adjusted to the contour of the land so as to produce usable lots and streets of reasonable gradient.

(c) Certain proposed streets, where appropriate, shall be extended to the boundary line of the tract to be subdivided so as to provide for normal circulation of traffic within the vicinity.

(d) Wherever there exists a dedicated or platted portion of a street or alley adjacent to the proposed subdivision, the remainder of the street or alley to the prescribed width shall be platted within the proposed subdivision.

(e) Widths of arterial streets shall conform to the widths specified in the thoroughfare plan.

(f) The minimum right-of-way of feeder streets shall be 60 feet, and of residential streets, marginal access streets, or cul-de-sacs shall be 50 feet. All cul-de-sacs shall terminate in a circular right-of-way with a minimum diameter of 100 feet.

(g) Alleys shall not be permitted in residential districts, but should be included in commercial and industrial areas, where needed, for loading and unloading or access purposes and, where platted, shall be at least 20 feet in width.

(h) The center lines of streets should intersect as nearly at right angles as possible.

(i) At the intersections of streets and alleys, property line corners shall be rounded by arcs of at least 20 feet radii or by chords of such arcs.

(j) At the intersections of streets, the property line corners shall be rounded by arcs with radii of not less than 15 feet, or by chords of such arcs.

(k) If the smaller angle of intersection of two streets is less than 60 degrees, the radius of the arc at the intersection of property lines shall be increased as deemed advisable by the Commission.

(l) Intersections of more than two streets at one point shall be avoided.

(m) Where parkways or special types of streets are involved, the Commission shall apply special standards to be followed in its design.

(n) Whenever the proposed subdivision contains, or is adjacent to, a railroad right-of-way or a highway designated as a limited access highway by the appropriate highway authorities, provision shall be made for a marginal access street, or a parallel street at a distance acceptable for the appropriate use of the land between the highway or railroad and such streets.

(o) Horizontal visibility on curved streets and vertical visibility on all streets must be maintained along the centerline as follows:

1. Limited access highways: to be determined by the Commission but generally not less than 500 feet;
2. Arterial streets and parkways: 400 feet; and
3. Feeder and residential streets: 150 feet.

(p) Curvature measured along the center line shall have a minimum radius as follows:

1. Limited access highways: 1,000 feet;
2. Arterial streets: 500 feet;
3. Parkways: 300 feet; and
4. Feeder and residential streets: 200 feet.

(q) Between reversed curves on arterial streets, a tangent of not less than 100 feet shall be provided, and on feeder and residential streets, such a tangent shall be not less than 40 feet.

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(r) Maximum and minimum grades.

1. Arterial streets not greater than 6%;
2. Feeder and residential streets and alleys not greater than 8%; and
3. The minimum grade of any street gutter shall be not less than 0.3%.

(3) *Blocks.*

(a) Blocks shall not exceed 1,250 feet in length.

(b) Blocks shall be of sufficient width to permit two tiers of lots of appropriate depth, except where an interior street parallels a limited access highway or an arterial street, or a railroad right-of-way.

(c) In blocks of over 700 feet in length, the Commission shall require at, or near, the middle of the block a public walk connecting adjacent streets or other public areas. Such walks shall be at least ten feet in width of the right-of-way, and shall be intended for the use of pedestrians only.

(4) *Lots.*

(a) All lots shall abut on a street or place.

(b) Side lines of lots shall be at approximately right angles to straight streets and on radial lines on curved streets. Some variation from this rule is permissible, but pointed or very irregular lots should be avoided.

(c) Double frontage lots should not be platted, except that where desired along arterial, limited access highways, or streets, lots may face on an interior street and back on such thoroughfares. In that event, a planting strip for a screen at least 20 feet in width shall be provided along the back of the lot.

(d) Widths and areas of lots shall be not less than provided in the zoning section for single-family dwellings for the district in which the subdivision is located, except that when a water main supply system or a sanitary sewer system is not available, the lot area necessary to install a private water supply or private sewage disposal on the lot, in accordance with the State Board of Health regulations, shall become the required minimum lot area.

(e) Wherever possible, unit shopping centers, based upon sound development standards, should be designed in contrast to the platting of lots for individual commercial use.

(f) Corner residential lots shall be wider than normal in order to permit appropriate setbacks from both streets.

(5) *Easements.* Where alleys are not provided, easements for utilities shall be provided. Such easements shall have widths of ten feet, and where located along lot lines, one-half of the width shall be taken from each lot. Before determining locations, the plan of easements shall be discussed with the local public utility companies to assure their proper placing for the installation of such services.

(6) *Building setback lines.* They shall be provided in the Zoning Code, Chapter 153, as amended, or as the Commission shall determine.

(7) *Public open spaces.* Where sites for parks, schools, playgrounds, or other public uses are located within the subdivision area, as shown on the Master Plan, or where such sites appear to be desirable, the Commission may request their dedication for such purposes, or their reservation for a period of one year following the date of the final approval of the plat. In the event a governmental agency concerned passes a resolution expressing its intent to acquire the land so reserved, the reservation period shall be extended for an additional six months.

(8) *Variance.* Where the subdivider can show that a provision of this section would cause unnecessary hardship if strictly adhered to and where, in the opinion of the Commission, because of topographical or other conditions peculiar to the site, a departure may be made without destroying the intent of such provision, the Commission shall authorize a variance. Any variance thus authorized is required to be entered in writing in the minutes of the Commission, and the reasoning on which the departure was justified shall be set forth.

(B) The final plat of the subdivision shall conform to the following standards of improvements:

(1) *Monuments and markers.*

(a) Shall be placed so that the scored or marked point shall coincide exactly with the intersection of lines to be marked, and shall be set so that the top of the monument or marker is level with the surface of the surrounding ground.

(b) Monuments shall be set:

1. At the intersection of all lines forming angles in the boundary of the subdivision;

and

2. At the intersection of street property lines.

(c) Markers shall be set:

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1. At the beginning and ending of all curves along street property lines;
2. At all points where lot lines intersect curves, either front or rear;
3. At all angles in property lines of lots; and
4. At all other lot corners.

(d) Monuments shall be of concrete or stone with a minimum size of four-foot by four-foot by three-inches, and shall be marked on top either with an iron or copper dowel set flush with the top of the monument or a cross scored deeply on top. Markers shall consist of iron pipes or steel bars at least three feet long, and not less than three-quarters of an inch in outside diameter.

(2) Streets.

(a) Streets and alleys shall be completed to grades shown on plans, profiles, and cross-sections prepared by the subdivider and approved by the Commission.

(b) The streets shall be graded, surfaced, and improved to the dimensions required by the cross-sections, and the work shall be performed in the manner prescribed in the latest edition of *Standard Specifications for Road and Bridge Construction and Maintenance* of the State Highway Commission of Indiana. References in the following division (B)(2)(c) below refer to the S.H.C. of I. Standard Specifications. All surfacing shall be approved by the Street Commissioner of the town. The streets shall be surfaced to a width of 27 feet.

(c) The street or alley surface shall be of portland cement concrete or a flexible pavement, and shall be constructed in accordance with design characteristics at least equal to those given below.

<i>Type of Street</i>				
<i>Kind of Pavement</i>	<i>Arterial Primary (inches)</i>	<i>Arterial Secondary (inches)</i>	<i>Feeder (inches)</i>	<i>Residential and Alley (inches)</i>
Concrete				
Balanced Design Thickness*	10-7-10	9-6-9	8-5½-8	7½-5-7½
Uniform Design Thickness	8¼	7¼	6½	6
Flexible**				
Asphaltic Surface Course	4	3	3	2

<i>Type of Street</i>				
<i>Kind of Pavement</i>	<i>Arterial Primary (inches)</i>	<i>Arterial Secondary (inches)</i>	<i>Feeder (inches)</i>	<i>Residential and Alley (inches)</i>
Base: Bituminous Coated Aggregate	4	4	3	3
Base: Water-Bound Macadam	6	6	6	6
Sub-base: Compacted Aggregated	8	7	6	6
Total Thickness (W-B Macadam)	18	16	15	13
* Intersections to be of uniform design edge thickness.				
** For intersections and parking strips on residential streets, use feeder street design characteristics.				

(d) Prior to placing the street surface, adequate sub-surfacing drainage for the street shall be provided by the subdivider. Sub-surface drainage, such as crossover pipes and the like, when required, shall be not less than 12 feet in diameter. Upon completion of the street and alley improvements, plans and profiles as built shall be filed with the Commission.

(3) *Sewers.* The subdivider shall provide the subdivision with a complete sanitary sewer system, which shall connect with a sanitary sewer outlet approved by the State Board of Health, except that when such approved outlet is not available, one of the following methods of sewage disposal shall be used:

(a) A complete sanitary sewer system to convey the sewage to a treatment plant to be provided by the subdivider in accordance with minimum requirements of the State Board of Health; and

(b) 1. Private sewage disposal system on individual lots consisting of a septic tank and tile absorption field, or other approved sewage disposal system, when laid out in accordance with minimum standards of the State Board of Health.

2. The plans for the installation of a sanitary sewer system shall be prepared by the subdivider and approved by the State Board of Health. Upon the completion of the sanitary sewer installation, the plans for such system as built shall be filed with the Commission.

3. In this division (B)(3), sewers, and division (B)(4) below, the phrase ***THE SUBDIVIDER SHALL PROVIDE*** shall be interpreted to mean that the subdivider shall install the facility referred to, or, whenever a private sewage disposal system or an individual water supply is to

be provided, that the subdivider shall require, as a condition of the sale of each lot or parcel in the subdivision, that the facilities referred to in these divisions shall be installed by the developer of the lots in accordance with these regulations.

(4) *Water.*

(a) The subdivider shall provide the subdivision with a complete water main supply system, which shall be connected to a municipal or community water supply approved by the State Board of Health, except that when such municipal or community water supply is not available, the subdivider shall provide an individual water supply on each lot in the subdivision in accordance with minimum requirements of the State Board of Health.

(b) The plans for the installation of a water main supply shall be prepared by the subdivider and approved by the State Board of Health. Upon the completion of the water supply installation, the plans for such system as built shall be filed with the Commission.

(5) *Storm drainage.* The subdivider shall provide the subdivision with an adequate storm water sewer system whenever the evidence available to the Commission indicates that the natural surface drainage is inadequate. When the surface drainage is adequate, easements for such surface drainage shall be provided.

(6) *Curb and gutter.* The Commission shall require curb and gutter to be installed on each side of the street surface. The curb and gutter shall be one of the construction types approved by the Commission and shall be constructed according to the following specifications.

(a) The base for the curb and gutter shall be well compacted on the existing base or grade.

(b) The minimum specifications shall be according to standards approved by the Commission.

(c) State highway specifications for Class D concrete must be met.

(7) *Street signs.* The subdivider shall provide the subdivision with standard town street signs at the intersection of all streets.

(8) *Street lights and fire hydrants.* The subdivider shall provide the subdivision with street lights and fire hydrants at street intersections. Additional street lights and fire hydrants may be required by the Commission.

(C) Improvements required in division (B) above to be installed by the subdivider, which are of a public utility nature (specifically divisions (B)(3), (B)(4), and (B)(5) thereof) may provide benefits to

other properties in the vicinity of the land to be subdivided. Upon the installation of such improvements which cross or adjoin other properties and can be used by such properties, the subdivider and the town shall, by contract, agree that, upon the connection or use of the installations made by the subdivider by others, within a period of ten years following their installation, the new uses or users shall pay to the town a fee in the amount agreed upon by the subdivider and the town, the amount of such fee to be credited to, and paid to, the subdivider.

(Prior Code, § 152.21) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

§ 151.22 CERTIFICATES.

(A) *Plat certificates.* The following form shall be used in final plats:

CERTIFICATES

UNDER AUTHORITY PROVIDED BY I.C. 36-7-4-100 *ET SEQ.* AS AMENDED, AND EDGEWOOD CODE CHAPTER 151, AS AMENDED, THIS PLAT WAS GIVEN APPROVAL BY THE TOWN AS FOLLOWS:

Approved by the Town Plan Commission at a meeting held _____, 19/20__.

President

Secretary

(B) Each final plat submitted to the Commission for approval shall carry a certificate signed by a registered professional engineer or land surveyor in substantially the following form:

I, _____ (name), hereby certify that I am a Professional Engineer (or a Land Surveyor), licensed in compliance with the laws of the State of Indiana; that this plat correctly represents a survey completed by me on _____ (date) that all the monuments shown thereon actually exist; and that the location, size, type and material are accurately shown.

(signature)

(SEAL)

(C) Each final plat submitted to the Commission for approval shall carry a deed of dedication in substantially the following form:

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We, the undersigned _____, owners of the real estate shown and described herein, do hereby certify that we have laid off, platted and subdivided, and do hereby lay off, plat and subdivide said real estate in accordance with the within plat.

This subdivision shall be known and designated as _____ (name) _____, an addition to _____ (name) _____, an addition to _____ (name) _____. All streets and alleys shown and not heretofore dedicated, are hereby dedicated to the public.

Front and side yard building setback lines are hereby established as shown on this plat, between which lines and the property lines of the street, there shall be erected or maintained no building or structure.

There are strips of ground _____ (number) _____ feet in width as shown on this plat and marked "Easement" reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of the public utilities.

(Additional dedications and protective covenants, or private restrictions, would be inserted here upon the subdividers initiative or the recommendations of the Commission; important provisions are those specifying the use to be made of the property and in the case of residential use, the minimum habitable floor area.)

The foregoing covenants, (or restrictions), are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 20__ , a 25 year period is suggested, at which time all said covenants (or restrictions), shall be automatically extended for successive periods of ten years unless changed by a vote of a majority of the then owners of the building sites covered by these covenants, or restrictions, in whole or in part. Invalidation of any one of the foregoing covenants or restrictions, by judgment or court order shall in no way affect any of the other covenants or restrictions, which shall remain in full force and effect.

The right to enforce these provisions by injunction, together with the right to cause the removal, by due process of law, of any structure or part thereof erected or maintained in violation hereof, is hereby dedicated to the public, and reserved to the several owners of the several lots in this subdivision and to their heirs and assigns.

Witness our Hands and Seals this ____ day of _____, 19/20__.

State of Indiana

SS.

County of Madison

Before me the undersigned Notary Public, in and for the County and State, personally appeared _____, and each separately and severally acknowledge the execution of the foregoing instrument as his or her voluntary act and deed, for the purposes therein expressed. Witness my Hand and Notarial Seal this _____ day of _____, 19/20__.

Notary Public

(Prior Code, § 152.22) (Ord. P-3, passed 8-16-1960; Ord. P-9, passed 6-17-1968)

CHAPTER 152: THOROUGHFARE PLAN

Section

- 152.01 Definition
- 152.02 Designation of chapter
- 152.03 Thoroughfare map
- 152.04 Thoroughfare cross-sections
- 152.05 Designation of thoroughfares
- 152.06 Policies and directives
- 152.07 Continuing authority of the Commission
- 152.08 Amendments
- 152.09 Availability to public inspection

- 152.99 Penalty

§ 152.01 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

COMMISSION. The Town Plan Commission.
(Prior Code, § 153.01) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.02 DESIGNATION OF CHAPTER.

This chapter shall be known and shall be cited as the “Town Thoroughfare Plan.”
(Prior Code, § 153.02) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.03 THOROUGHFARE MAP.

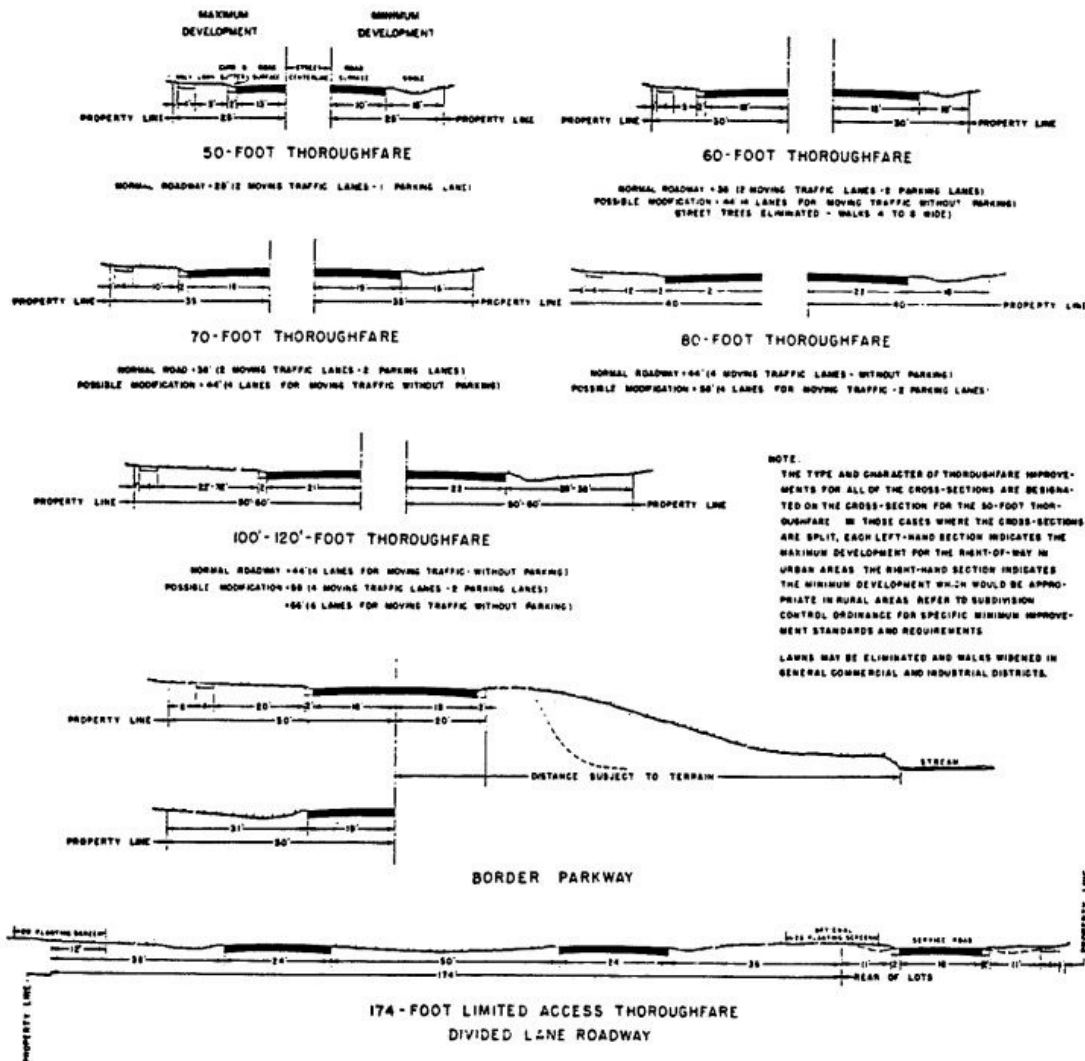
The Town Thoroughfare Plan consists of a map entitled “Thoroughfare Plan, Edgewood, Indiana,” dated 1983, which shows the location of existing and proposed thoroughfares within the jurisdiction of

the Commission, and is incorporated by reference into this chapter. Notations, references, indications, and other details shown on the thoroughfare plan are as much a part of this chapter as if they were fully described in the text of this chapter.

(Prior Code, § 153.03) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.04 THOROUGHFARE CROSS-SECTIONS.

A drawing entitled “Typical Thoroughfare Cross-Sections, Anderson, Indiana,” showing cross-sections for streets as designated on the “Major Street and Highway Plan, Thoroughfare Plan, Edgewood, Indiana” follows:



(Prior Code, § 153.04) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.05 DESIGNATION OF THOROUGHFARES.

The thoroughfares within the jurisdiction of the Commission are classified as to width and type in accordance with their function as a part of the thoroughfare system, and are designated as arterial, feeder, parkway, and residential streets as shown on the thoroughfare plan. Such streets are to be provided with the right-of-way widths shown on the thoroughfare plan as set out in § 152.06, and are to be improved as required by the subdivision regulations in Chapter 151.

(Prior Code, § 153.05) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.06 POLICIES AND DIRECTIVES.

(A) *Opening or widening of streets.* Whenever a street designated on the thoroughfare plan is to be platted as a part of a subdivision of land, the right-of-way width shall conform to the policies and specified designations and indications in the thoroughfare plan, provided that where a street borders a tract of land to be subdivided, the owner of such land shall be required to plat only half of the right-of-way width designated for such street, measured at 90 degrees to the centerline thereof.

(B) *Location of streets.*

(1) Wherever the location of streets are indicated on the thoroughfare plan as following existing roads or streets, or section or half-section lines, or other established property lines, they shall conform to such locations; however, streets lying wholly within a subdivision, and not designated as following an existing road or section line, shall be varied in their alignment when such variance promotes the plan of a neighborhood development unit in accordance with good site planning principles, and if such alignment provides for the continuity of traffic movement.

(2) Streets which follow irregular alignment or indicate reversed alignment, or are not referenced to established lines, shall follow in a general manner the alignment shown on the thoroughfare plan. Their alignment shall be subject to a detailed survey which shall be made by the owners of land to be subdivided. Such surveys shall be subject to the approval of the Commission prior to the acquisition of land or the filing of subdivision plans affecting such streets.

(C) *Consideration by public agencies.* The town shall be guided by, and give consideration to, the general policy and pattern of development set out in the thoroughfare plan in the authorization, construction, alteration, or abandonment of public highways and related structures.

(D) *Issuance of permits.* In the case of permits authorized by the Town Council for the erection or alteration of structures and other improvements, the permits shall be issued only if the proposed street and thoroughfare rights-of-way, as set forth by this plan, will be protected from encroachment and, for planning and zoning purposes, the proposed street and thoroughfare right-of-way lines will be considered as the front line of lots and tracts bordering such streets and thoroughfares.

(Prior Code, § 153.06) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967) Penalty, see § 152.99

§ 152.07 CONTINUING AUTHORITY OF THE COMMISSION.

Subsequent to the adoption of the thoroughfare plan and the passage of this chapter, the Commission shall:

(A) Determine lines for new, extended, widened, or narrowed thoroughfares in any portion of the town; and/or

(B) Certify to the Town Council the amended plan under the same procedures as established for the certification and approval of the thoroughfare plan.

(Prior Code, § 153.07) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.08 AMENDMENTS.

In addition to the provisions of § 152.07, amendments shall be initiated as follows.

(A) The Town Council shall direct the Commission to prepare an amendment, as desired, and submit it to public hearing within 60 days after formal written request by the Town Council.

(B) The owners of 50% or more of the area may also petition the Commission requesting an amendment to the thoroughfare plan.

(Prior Code, § 153.08) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.09 AVAILABILITY TO PUBLIC INSPECTION.

Two copies of the thoroughfare plan and this chapter, and two copies of typical thoroughfare cross-sections, shall be kept on file in the office of the Clerk-Treasurer and shall be subject to public examination during the regular office hours of the Clerk-Treasurer.

(Prior Code, § 153.09) (Ord. P-5, passed 10-17-1961; Ord. P-9, passed 6-17-1967)

§ 152.99 PENALTY.

Any person violating any provisions of this chapter shall be guilty of an infraction and, upon conviction, shall be fined not more than \$100. Each day any violation continues or is permitted to exist constitutes a separate offense. The owner of any building and the architect, builder, or contractor of any building erected or reconstructed in violation of these sections shall each be guilty of a separate offense. (Prior Code, § 153.99) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

CHAPTER 153: ZONING CODE

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GENERAL PROVISIONS**§ 153.001 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY USE. A use which is incidental to the main use of the premises.

ALLEY. A public thoroughfare, which affords only secondary means of vehicular access to abutting property, and less than 30 feet in width.

BASEMENT. A story partly underground, but having not less than half of its clear height below, which unless subdivided into rooms and used for tenant purposes, shall not be included as a story for the purpose of height measurements.

BLOCK. Property having frontage on one side of a street and lying between the two nearest intersecting or intercepting streets, or nearest intersecting or intercepting street and railroad right-of-way, waterway, or other barrier.

BLOCK FRONTAGE. Property abutting on one side of a street and lying between the two nearest intersecting or intercepting streets, or nearest intersecting or intercepting street and railroad right-of-way, waterway, or other barrier.

BOARD. The Board of Zoning Appeals.

BUILDING. A structure having a concrete and/or masonry foundation, and a roof supported by columns or walls for the shelter, support, enclosure, or protection of persons, animals, chattels, or property. When separated by party walls, each portion of such a building shall be considered a separate structure. **BUILDING** includes the word **STRUCTURE** and vice-versa.

BUILDING ACCESSORY. A subordinate building, or a portion of a main building, the use of which is incidental to that of the main building.

BUILDING AREA. The maximum horizontal projected area of the principal and accessory building, excluding open steps or terraces, unenclosed porches not exceeding one story in height, or architectural appurtenances projecting not more than two feet.

BUILDING, FRONT LINE OF. The line of the face of the building nearest the front lot line.

BUILDING, HEIGHT OF. The vertical distance measured from the lot ground level to the highest point of the roof for a flat roof; to the deck line of a mansard roof; and to the mean height between eaves and ridges for gable, hip, and gambrel roof.

BUILDING, PRINCIPAL. A building in which is conducted the main or principal use of the lot on which the building is situated. Where a substantial part of the wall of an accessory building is a part of the wall of the **PRINCIPAL BUILDING**, or where an accessory building is attached to the main building in a substantial manner by a roof, such accessory building shall be counted as a part of the **PRINCIPAL BUILDING**.

BUSINESS. The engaging in the purchase, sale, barter, or exchange of goods, wares, merchandise or services, the maintenance or operation of offices, or recreational and amusement enterprises for profit.

CEMETERY. Land used for the burial of the dead and dedicated for cemetery purposes including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.

CERTIFICATE OF OCCUPANCY. A certificate signed by the Building Commissioner stating that the occupancy and use of land, or a building, or structure referred to therein, complies with the provisions of this chapter.

COMMERCIAL. Same as business.

COMMISSION. Town Plan Commission.

DEVELOPMENT PLAN. A drawing, including a legal or site description, of the real estate involved which shows the location and size of all existing and proposed buildings, structures, and yards; location and dimension of building lines and easements; widths and lengths of all entrances and exits to and from said real estate; location of all adjacent or adjoining streets; all of which presents a unified and organized arrangement of buildings and service facilities and other improvements such as planting areas, which shall have a functional relationship to the real estate comprising the planned development and to the uses of properties immediately adjacent to the proposed development.

DWELLING. A building or portion thereof, used primarily as a place of abode for one or more human beings, but not including hotels or motels, lodging or boarding houses, or tourist homes.

DWELLING UNIT. A dwelling or portion of a dwelling used by one family for cooking, living, and sleeping purposes.

DISTRICT. A section of the town for which uniform regulations governing the use, height, area, size, and intensity of use of building and land, and open spaces about buildings, are herein established.

FAMILY. A group of one or more persons occupying a building and living as a single housekeeping unit. No unrelated group living as a single housekeeping unit shall consist of more than six persons, as distinguished from a group occupying a lodging house or hotel.

FARM. A tract of land comprising an area which is devoted to agricultural operations, such as forestry; the growing of crops; pasturage; the production of livestock and poultry; the growing of trees, shrubs, and plants; and other recognized agricultural pursuits, and including accessory buildings essential to the operation of the farm. Accessory buildings shall include barns; equipment and animal sheds; farm

residences for the owner, operator, or farm assistants; roadside sales structure for the sale of products of the farm; and signs displaying subject matter directly related to the name or the products of the particular farm; but not including industrial or business operations or structures.

FILLING STATION. Any establishment supplying and selling motor fuel or oil direct to motor vehicles.

GARAGE, PRIVATE. An accessory building with capacity for not more than three motor vehicles for storage only, not more than one of which may be a commercial vehicle of not more than three tons capacity. Provided, however, that a garage designed to house one motor vehicle for each family housed in an apartment shall be classed as a **PRIVATE GARAGE**.

GARAGE, PUBLIC. Any building or premises, except those defined herein as a **PRIVATE GARAGE**, used for the storage or care of motor vehicles, or where such vehicles are equipped for operation, repaired, or kept for remuneration or sale.

GROUND FLOOR AREA. The square foot area of a residential building within its largest outside dimensions computed on a horizontal plane at the ground floor level, exclusive of open porches, breezeways, terraces, garages, or exterior and interior stairways.

IMPROVEMENT LOCATION PERMIT. A permit signed by the Building Commissioner stating that a proposed improvement complies with the provisions of this chapter and any ordinance as may be applicable.

KENNEL. Any lot or premises on which four or more dogs, at least four months of age, are kept.

LOADING AND UNLOADING BERTH. The off-street area required for the receipt or distribution by vehicles of material or merchandise, which, in this chapter, is held to be a 12-foot by 45-foot loading space with a 14-foot height clearance.

LOT. A parcel, tract, or area of land accessible by means of a street or place. For residential uses as set forth in this chapter, the lot shall abut upon a street or place at least 50% of the lot width prescribed for the district in which the lot is located. It may be a single parcel separately described in a deed or plat which is recorded in the office of the County Recorder, or it may include parts of, or a combination of, such parcels when adjacent to one another and used as one. In determining lot area and boundary lines, no part thereof within the limits of a street shall be included.

LOT CORNER. A lot at the junction of, and abutting upon, two or more streets at their intersection.

LOT COVERAGE. The percentage of the lot area covered by the building area.

LOT, DEPTH OF. The mean horizontal distance between the front line and the rear line of the lot, measured in the general direction of the side lot lines.

LOT, GROUND LEVEL.

(1) For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street.

(2) For buildings having walls adjoining more than one street, the average of the elevation of the sidewalk at the center of all walls adjoining the streets.

(3) For buildings having no wall adjoining the street, the average level of the ground adjacent to the exterior walls of the building. Any wall approximately parallel to, and not more than five feet from, a street is to be considered as adjoining the street.

LOT, INTERIOR. A lot other than a corner lot or through lot.

LOT LINE, FRONT. In the case of an interior lot, a line separating the lot from the street or place, and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street, except in cases where deed restrictions in effect specify another line as the **FRONT LOT LINE**.

LOT LINE, REAR. A lot line which is opposite and most direct from the front lot line and, in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to, and at the maximum distance from, the front lot line.

LOT LINE, SIDE. Any lot boundary line not a front lot line or a rear lot line.

LOT, THROUGH. A lot having frontage on two streets at opposite ends of the lot.

LOT, WIDTH. The dimension of a lot, measured between side lot lines on the building.

PARKING AREA, PUBLIC. An open area, other than a street or alley, designed for use or used for the temporary parking of more than four motor vehicles when available for public use, whether free or for compensation, or as an accommodation for clients or customers, paved with a suitable dust preventive or hard surface.

PARKING SPACE. A space, other than on a street or alley, designed for use or used for the temporary parking of a motor vehicle, and being not less than nine feet wide and 20 feet long exclusive of passageways.

PLACE. An open unoccupied space other than a street or alley, permanently reserved for use as the principal means of access to abutting property.

PLAT. A map or chart indicating the subdivision or resubdivision of land, intended to be filed for record.

PRIVATE SCHOOL. Private preprimary, primary, grade, high, or preparatory school or academy.

PROFESSIONAL OFFICE. Office of a member of the following recognized professions: architect, attorney, dentist, engineer, physician, or surgeon.

SIGN. An advertising sign, billboard, or board, device, or structure, or part thereof, or device attached thereto, or painted or represented thereon, used for advertising, display, or publicity purposes. **SIGNS** placed or erected by governmental agencies for the purpose of showing street names, or traffic directions, or regulations for other governmental purposes shall not be included.

STORY. The portion of a building, included between the surface of any floor and the surface of the floor next above it. If there is no floor above it, then the space between such floor and the ceiling next above it shall be the **STORY**.

STORY, HALF. The portion of a building under a sloping, gable, hip, or gambrel roof, and the wall plates on at least two opposite exterior walls of which are not more than three feet above the floor level of such half-story.

STREET. A public thoroughfare 30 feet or more in width between lines, which affords principal means of vehicular access to abutting property.

STRUCTURAL ALTERATION. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any substantial change in the exterior walls or the roof.

STRUCTURE. Anything constructed or erected, the use of which requires more or less permanent location on the ground, or which is attached to something permanently located on the ground.

USE. The employment or occupation of a building, structure, or land for a person's service, benefit, or enjoyment.

USE, NONCONFORMING. A lawful existing use of land or building which fails to comply with the requirements set forth in this chapter applicable to the district in which such use is located.

VARIANCE. A modification of the specific requirements of this chapter granted by the Board in accordance with the terms of this chapter for the purpose of assuring that no property, because of special circumstances applicable to it, shall be deprived of privileges commonly enjoyed by other properties in the same vicinity and district.

VEHICLE PARKING SPACES. The area required for parking one automobile, which in this chapter is held to be an area nine feet wide and 20 feet long plus 70 square feet of maneuver for each **VEHICLE PARKING SPACE**.

VISION CLEARANCE ON CORNER LOTS. A triangular space at the street corner of a corner lot, free from any kind of obstruction to vision between the heights of three and 12 feet above the established street grade. The street grade is measured at the intersection of the centerlines of the intersecting street pavement, and the triangular space is determined by a diagonal line connecting two points measured 15 feet equidistant from the lot corner along each property line.

YARD. A space on the same lot with a principal building, open, unoccupied, and unobstructed by structures, except as otherwise provided in this chapter.

YARD, FRONT. A yard extending across the full width of the lot, unoccupied other than by steps, walks, terraces, driveways, lamp posts, and similar structures, the depth of which is the least distance between the front lot line and the building line.

YARD, REAR. A yard extending across the full width of the lot between the rear of the principal building and the rear lot line unoccupied other than by accessory buildings which do not occupy more than 30% of the required space, and steps, walks, terraces, driveways, lamp posts, and similar structures, the depth of which is the least distance between the rear lot line and the rear of such principal building.

YARD, SIDE. A yard between the principal building and the side lot line, extending from the front yard, or from the front lot line where no front yard is required, to the rear yard. The width of the required **SIDE YARD** is measured horizontally, at 90 degrees with the side lot line, from the nearest part of the principal building.

ZONE. Same as **DISTRICT**.

(Prior Code, § 154.01) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982; Ord. 2-20-1996, passed 2-20-1996)

§ 153.002 SHORT TITLE.

This chapter, as amended, shall be known, and shall be cited hereafter, as the “Town Zoning Ordinance.”

(Prior Code, § 154.02) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.003 INTERPRETATION.

In interpreting and applying the provisions of this chapter, the provisions shall be deemed the minimum requirements for the promotion of the public health, safety, morals, convenience, and general welfare.

(Prior Code, § 154.03) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.004 NON-INTERFERENCE.

This chapter does not interfere with, or abrogate, or annul any easements, covenants, or other agreements between parties, nor to interfere with, or abrogate, or annul any ordinances other than expressly repealed hereby, rules, regulations, or permits previously adopted or issued, and not in conflict with any of the provisions of this chapter, or which shall be adopted or provided, except that where this chapter imposes a greater restriction upon the use of buildings or land, or upon the height of buildings, or requires larger open spaces, or greater lot area per family, than are required by or imposed by such easements, covenants, or agreements between parties, or by such ordinances, rules, regulations, or permits, the provisions of this chapter shall control.

(Prior Code, § 154.04) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.005 DISTRICTS.

The town is divided into five districts in order to carry out the purposes of this chapter. The districts shall be known and designated throughout this chapter as follows:

<i>Name of District</i>	<i>Designation</i>
Business District	B1
Neighborhood Shopping Center District	B2
Single-Family Residence District	R1
Single-Family Residence District	R2
Two-Family Residence District	R3

(Prior Code, § 154.05) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.006 ZONING MAP.

(A) The Zoning Map, dated 1983, is incorporated herein by reference.

(B) The Zoning Map shows the areas included in the above districts.

(C) Notations, references, indications, and other matters shown on the Zoning Map are as such a part of this chapter as if they were fully described in the text of this chapter.

(Prior Code, § 154.06) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.007 DISTRICT BOUNDARIES.

(A) In determining the boundaries of districts, and establishing the regulations applicable to each district, due and careful consideration has been given to existing conditions, the character of buildings erected in each district, the most desirable use for which the land in each district may be adapted, and the conservation of property values throughout the town.

(B) Where uncertainty exists as to the exact boundaries of any district as shown on the Zoning Map, the following rules shall apply.

(1) In unsubdivided areas, or where a district boundary subdivides a lot, the exact location of the boundary shall be determined by use of the scale of the Zoning Map.

(2) In the case of further uncertainty, the Board of Zoning Appeals shall interpret the intent of the Zoning Map as to the location of the boundary in question.

(Prior Code, § 154.07) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.008 ANNEXED OR VACATED AREAS.

(A) Territory which may hereafter be annexed to the town shall immediately be included in the R1 Single-Family Residence District until the required amendment to this chapter has been adopted.

(B) Whenever any highway, alley, public way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the districts adjoining each side of such highway, alley, public way, railroad right-of-way, or similar areas shall be extended automatically to the center of such vacation, and all area included in the vacation shall then and thenceforth be subject to all appropriate regulations of

the extended districts. In the event of a partial vacation, the adjoining district, or district nearest the portion vacated, shall be extended automatically to include all of the vacated area.

(Prior Code, § 154.06) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

SPECIFICATIONS

§ 153.020 USE.

No building or land shall be used, and no building shall be erected, reconstructed, or structurally altered, which is arranged, intended, or designed to be used for any purpose other than a use which is permitted and specified in a district in which such building or land is located.

(Prior Code, § 154.15) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.021 HEIGHT.

No building shall be erected, reconstructed, or structurally altered to exceed in height the limits established and specified for the use in the district in which such building is located.

(Prior Code, § 154.16) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982) Penalty, see § 153.999

§ 153.022 YARDS, LOT AREA, AND SIZE OF BUILDINGS.

No building shall be erected, reconstructed, or structurally altered in any manner which will encroach upon, or reduce in any manner, the yards, lot area per family, ground floor area of residential buildings, or lot coverage regulations, established and specified for the use and the district in which such building is located.

(Prior Code, § 154.17) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982) Penalty, see § 153.999

§ 153.023 LOTS.

Every building hereafter erected shall be located on a lot. In no case shall there be more than one principal building used for residential purposes, and its accessory buildings, located on one lot.

(Prior Code, § 154.18) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982) Penalty, see § 153.999

§ 153.024 LOADING AND UNLOADING BERTHS.

Every building hereafter erected shall provide off-street parking space for motor vehicles and loading and unloading berths as specified hereinafter for the use to which such building is to be devoted. (Prior Code, § 154.19) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982) Penalty, see § 153.999

§ 153.025 SPECIFICATIONS.

Sections 153.026 through 153.028 inclusive show the district or districts in which the use, which is the subject of this specification, is permitted, and delineates the specifications for:

- (A) Lot area per family;
- (B) Width of lot;
- (C) Height of building;
- (D) Vehicle parking place;
- (E) Front, side, rear, and other lots;
- (F) Lot coverage;
- (G) Size of building;
- (H) Vision clearance; and

(I) Accessory buildings and uses applicable to the particular use in each district where such use is authorized.

(Prior Code, § 154.20) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.026 RESIDENTIAL USES.

- (A) *Single-family dwelling.*

(1) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SINGLE-FAMILY DWELLING. A detached building designated or occupied by one family exclusively.

(2) *Location permitted.* Only in the districts designated below, provided it is located:

(a) On a lot which was in single ownership or included in a subdivision recorded in the office of the County Recorder, on or before the date of passage of this section; or

(b) On any lot with a maximum area in square feet and width in feet as follows:

<i>District</i>	<i>Lot Area</i>	<i>Lot Width</i>
R1, R2, or R3	10,000 sq. ft.	70 ft.

(3) *Height of buildings.* Principal building normal maximum: 35 feet or two and one-half stories.

(4) *Front yard.* Fifty feet in the R1 District, 40 feet in the R2 and R3 Districts.

(5) *Side yard.* The sum of the side yards shall equal not less than 20% of the lot width with a minimum width of 15 feet for either side yard in an R1 District and ten feet for either side yard in the R2 and R3 Districts. The side yard on a corner lot shall not be less than 25 feet.

(6) *Rear yard.* Fifteen percent of the depth of the lot, with a minimum depth of 15 feet.

(7) *Ground floor area.* Not less than the following:

<i>District</i>	<i>Ground Floor Area</i>
R1	1,200 sq. ft.
R2 or R3	1,000 sq. ft.

(8) *Lot coverage.* Forty percent maximum on a corner lot, 35% maximum on an interior lot.

(9) *Accessory building, uses permitted.* Private garage, storage, exclusive of commercial use. Quarters for bona fide servants employed by the occupants of the dwelling on the same lot, but only on the second floor of the building. One guest house with cooking facilities on lots containing not less than 12,000 square feet.

(B) *Two-family dwelling.*

(1) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

TWO-FAMILY DWELLING. A detached building designed for or occupied by two families. A **DUPLEX DWELLING** has one family above the other. A **DOUBLE DWELLING** has one family beside the other.

(2) *Location permitted.* Only in the districts designated below on any lot with a minimum area in square feet and width in feet as follows:

<i>District</i>	<i>Lot Area</i>	<i>Lot Width</i>
R3	10,000 sq. ft.	70 ft.

(3) *Height of buildings.*

(a) *Principal building.* Normal maximum: 35 feet or two and one-half stories.

(b) *Conditional exception.* Height of principal building may be increased above 35 feet, but not higher than 45 feet or three stories, if two side yards of 15 feet each are provided.

(4) *Front yard.* Twenty percent of the average depth of lots in the block, but not less than 50 feet.

(5) *Side yard.* The sum of the side yards shall equal not less than 20% of the lot width with a minimum width of ten feet for either side yard.

(6) *Rear yard.* Fifteen percent of the depth of the lot, with a minimum depth of 15 feet.

(7) *Ground floor area.* Not less than the following:

<i>District</i>	<i>Ground Floor Area</i>
R3	Double — 1,500 sq. ft.
	Duplex — 1,000 sq. ft.

(8) *Lot coverage.* Forty percent maximum on a corner lot; 35 feet maximum on an interior lot.

(9) *Accessory building, uses permitted.* Private garage, storage, exclusive of industrial or commercial use.

(C) *General provisions.*

(1) *Rear yard.* One-half of an alley abutting the rear lot may be included in the required rear yard.

(2) *Vision clearance on corner lot.* As provided by definition herein.

(3) *Vehicle parking space.* One space on the lot for each family housed in the principal building.

(4) *Accessory buildings.*

(a) Shall not be permitted prior to the erection of the principal building, except for strictly storage purposes, and not for human occupancy.

(b) No accessory building shall be located closer to the side or rear lot line than three feet.

(c) The maximum floor area of the accessory building is not to exceed 192 square feet, and the maximum height is not to exceed 12 feet.

(5) *Type of home.* Only stick built homes, not manufactured homes or manufactured housing, are permitted residential uses within the town.

(D) *Conditional exceptions.*

(1) *Front yard.*

(a) Where 25% or more of the lots in a block are occupied by buildings, the average setback of such buildings determines the dimension of the front yard in the block, but the maximum front need not exceed 50 feet in the R1 District, 40 feet in the R2 and R3 Districts, or 15 feet in other districts.

(b) Front yard or setback lines established in recorded subdivisions establish the dimensions of front yards in such blocks, except when such setback lines may be less restrictive as provided in § 153.027.

(c) On lots extending through from one street to another, a front yard is required on each street.

(2) *Tapered yard.* Where a reversed interior lot abuts a corner lot, or on an alley separating such lots, any accessory building located on the rear lot line of a corner lot shall set back from the side street as far as the dwelling on the reversed interior lot; for each foot that such accessory building is placed from the rear line towards the front line of the corner lot, the accessory building may be set four inches closer to the side street line, but in no case closer than 25 feet.

(Prior Code, § 154.21) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982; Ord. 6-16-1998, passed 6-16-1998; Ord. 6-16-1998A, passed 6-16-1998; Ord. 6-18-02, passed 6-18-2002; Ord. 05-19-09B, passed 5-19-2009; Ord. 02-08-16, passed 2-8-2016) Penalty, see § 153.999

§ 153.027 COMMERCIAL USES.

(A) *Local business uses.*

(1) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

LOCAL BUSINESS USES. Commercial uses primarily of a retail or service nature.

(2) *Location permitted.* The following classification of business uses specifically stated or implied are permitted in B1 and B2 Districts:

(a) Automobile service:

1. Filling station;
2. Commercial parking lot; and
3. Automobile repair, entirely within enclosed buildings.

(b) Business service:

1. Bank;
2. Office;
3. Postal station; and
4. Telegraph office.

(c) Clothing service:

1. Laundry agency;
2. Self-service laundry;
3. Dry cleaning establishment using not more than two clothes cleaning units, neither of which shall have a rated capacity of more than 40 pounds using cleaning fluid which is nonexplosive and noninflammable;
4. Dressmaking;
5. Millinery;
6. Tailor and pressing shop; and
7. Shoe repair shop.

(d) Equipment service:

1. Radio shop;
2. Electric appliance shop; and
3. Record shop.

(e) Food service (see § 153.029);

(f) Personal service:

1. Barber shop;
2. Beauty shop;
3. Reducing salon;
4. Photographic studio; and
5. Massage therapy salon. All employees and therapists of the massage therapy salon must be accredited by the American Massage Therapy Association plus any state or federal licensing which may be in effect now or in the future.

(g) Retail service, retail stores generally:

1. Drugstore;
2. Hardware;
3. Stationer;
4. Newsdealer;
5. Show room, for articles to be sold at retail;
6. Apparel shop; and
7. Flower shop.

(3) *Height of buildings.* Districts B1 and B2 should have a normal maximum height of 25 feet.

(4) *Front yard.* Forty feet.

(5) *Side yard.*

(a) Along the side street line of a corner lot in a B1 District, where the block is adjoined by a residential block, the minimum dimension shall be 15 feet.

(b) Where a B1 District adjoins an R1, R2, or R3 District within a block, there shall be a side yard of at least 15 feet.

(6) *Rear yard.* Ten percent of the depth of the lot.

(7) *Lot coverage.* Ninety percent maximum, but this shall not waive the provision of yards where required.

(8) *Prohibited classes of businesses.* The following classes of businesses specifically stated or implied are not permitted in B1 or B2 Districts.

(a) 1. Gaming activities including, but not limited to, bingo, raffles, and the sale of pull tabs, punch boards, and tip boards conducted pursuant to an annual bingo license.

2. All other businesses not specifically set forth under divisions (A)(2)(a) to (A)(2)(g) above inclusive.

(b) Nonconforming businesses; lawful nonconforming businesses. All legally existing businesses prior to the enactment of this subchapter shall be regarded as lawful nonconforming businesses and may be continued, subject to being properly operated and maintained, so long as the existing business is not expanded in size or relocated, unless the expansion or relocation brings this business into conformity with this subchapter, and so long as the ownership and/or tenant of the property and the ownership and/or tenant of the business does not change in name or otherwise.

(B) *General provisions applicable to all business uses.*

(1) *Vehicle parking space.*

(a) Parking spaces shall be provided on the lot, as follows:

<i>Uses</i>	<i>Number of Parking Spaces</i>
Local business uses listed in divisions (A)(2)(c) to (A)(2)(g) above inclusive	One space for each 125 square feet of floor area
Local business, business services uses listed in division (A)(2)(b) above	One space for each three employees

(b) All legally existing parking prior to the enactment of this subchapter shall be regarded as lawful nonconforming parking and may be continued, subject to being properly operated and maintained, so long as the existing parking is not expanded in size or relocated, unless the expansion or relocation brings the parking into conformity with this subchapter, and so long as the ownership and/or tenant of the parking area and the ownership and/or tenant of the business using the parking area does not change in name or otherwise.

(2) *Loading and unloading berths.* Loading and unloading berths shall be provided on the lot as follows:

<i>Use</i>	<i>Gross Floor Area (sq. ft.)</i>	<i>Loading and Unloading Berths</i>
Office buildings	100,000 or less	1
	100,001 to 336,000	2
	Each 200,000 additional	1 additional
Retail stores and other commercial uses	3,000 to 15,000	1
	15,001 to 40,000	2
	Each 25,000 additional	1 additional

(3) *Paving*. Open parking area and loading and unloading berths shall be paved with a dust-proof or hard surface, meeting the standard specifications of the town.

(4) *Rear yard*. One-half of an alley abutting the rear of a lot may be included in the rear yard to satisfy the rear yard requirements, but such alley space shall not be included for loading and unloading berths.

(5) *Vision clearance on corner lots*. Fifteen feet from the intersection of property lines.

(C) *Conditional exceptions*.

(1) *Maximum height*. The normal maximum height of structures may be increased as follows.

(a) Buildings may be erected higher than the normal maximum if they are set back from front and rear property lines, one foot for each two feet of additional height above the normal maximum height.

(b) Chimneys, cooling towers, elevator bulkheads, fire towers, penthouses, stacks, tanks, water towers, transmission towers, or essential mechanical appurtenances, may be erected to any height not prohibited by other laws or ordinances.

(2) *Front yard*. Where 25% or more of the lots in a block are occupied by buildings, necessary setback of such buildings determines the dimension of the front yard in the block, but the maximum front yard need not exceed 40 feet.

(3) *Vehicle parking space*. Groups of uses requiring vehicle parking space may join in establishing group parking areas with capacity aggregating that required for each participating use. (Prior Code, § 154.22) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982; Ord. 10-21-1997(A), passed 10-21-1997; Ord. 8-17-1999, passed 8-17-1999; Ord. 8-17-1999B, passed 8-17-1999; Ord. 5-18-04, passed 5-18-2004) Penalty, see § 153.999

§ 153.028 CONTINGENT USES.

(A) *Definition*. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

CONTINGENT USES. Uses which are likely or liable, but not certain to occur, and which are not inappropriate to the principal use of the district in which located.

(B) *Location permitted and vehicle parking space required.* Contingent uses, as listed herein, are permitted in the district indicated below. Each use shall provide on the lot, or within 300 feet thereof on a site approved by the Board, parking space open or enclosed as follows:

(C) *District parking schedule.*

<i>Contingent Use</i>	<i>District in which Permitted</i>	<i>Parking Spaces Required</i>
Building devoted primarily to religious activities	All	1 for each 4 seats in main auditorium
Bulletin board for a church or public building	All	
Community Center	All	1 for each 6 seats
Food service	B1, B2	1 for each 6 seats
Municipal or government building	All	1 for each 125 sq. ft. ground floor area
Professional office in residence of practicing professional person	All	2 additional
Public library	All	1 for each 125 sq. ft. of ground floor area
Public park or public recreational facility	All	1 for each 5,000 sq. ft. of area
School, public or parochial	All	1 for each 3 members of the staff plus 1 each 8 seats in auditorium

(D) *Paving.* Open parking area shall be paved with a dust-proof or hard surface meeting the standard specifications of the town.

(E) *Conditional exceptions.*

(1) *Parking requirements.* A building devoted to religious activities which requires parking area at times when nearby users do not need their parking facilities, may, by agreement approved by the Board, utilize such facilities in lieu of providing their own parking facilities.

(2) *Height permitted.*

<i>Districts</i>	<i>Normal Maximum Height</i>
B1 and B2	25 feet or 2 stories
R1, R2, and R3	35 feet or 2-1/2 stories

Edgewood - Land Usage

(a) Buildings may be erected to heights in excess of normal maximum, if they are set back from required front, side, and rear yard lines, or property lines where yard are not required as follows: All districts shall have one foot for each foot of additional height.

(b) In all districts, spires, church steeples, chimneys, cooling towers, elevator bulkheads, fire towers, scenery lofts, water towers, transmission towers, and other essential mechanical appurtenances may be erected to any height not prohibited by other laws or ordinances.

(F) *Private swimming pools.*

(1) *Permitted as a contingent use.* A private swimming pool, in ground only, shall be a permitted contingent use in an R1, R2, or R3 District, subject to the conditions set forth herein.

(2) *Building permit required.* Before a private swimming pool may be installed, the landowner shall obtain a building permit issued by the Building Commissioner.

(3) *Conditions for issuance of building permit.* The Building Commissioner shall be authorized to issue a building permit for the installation of a private swimming pool only if the Building Commissioner determines that such pool will not impair the value of surrounding lands and buildings, will not be a safety hazard, and will comply with the following standards.

(a) *Minimum size and rear yard setbacks.* A swimming pool or its deck shall be set back a minimum of the greater of the following:

1. Ten feet from the side or rear lot line; or
2. The minimum side or rear setback for the district or subdivision.

(b) *Safety.* For purposes of safety, the following shall apply. Access to private pools shall be restricted by one of the following means:

1. Walls or fencing not less than five feet high and completely surrounding the pool and deck area, with the exception of self-closing and latching gates and doors, both capable of being locked.

2. Other means not less than five feet high and deemed impenetrable by the enforcing authority at the time of construction, and completely surrounding the pool and deck area when the pool is not in use.

3. A combination of divisions (F)(3)(b)1. and (F)(3)(b)2. above that completely surrounds the pool and deck, with the exception of self-closing and latching gates and doors that are capable of being locked. This applies to divisions (F)(3)(b)1. and (F)(3)(b)2. above only.

4. A power safety pool cover that shall:

- a. Provide a continuous connection between the cover and the deck, so as to prohibit access to the pool when the cover is completely drawn over the pool;
- b. Be mechanically operated by a key, or a key and switch, such that the cover cannot be drawn open or retracted without the use of a key;
- c. Be installed with tracks, rollers, rails, guides, or other accessories necessary to accomplish the two preceding divisions, in accordance with the manufacturer's instructions; and
- d. Bear an identification tag indicating that the cover satisfies the requirements of ASTM F1346 for power safety pool covers.

(4) *Additional restrictions may be imposed.* The Building Commissioner may also impose reasonable additional restrictions or covenants as a condition to the issuance of a building permit for a private pool.

(5) (a) *Compliance required after issuance of building permit.* After issuance of a building permit for the installation of a private swimming pool, the land owner (including any subsequent transferees) shall comply with this division (F), including any restrictions or covenants imposed as a condition for issuance of the building permit, and shall operate and maintain the private swimming pool so that it does not become a nuisance, and so that it does not detract from the appearance of the neighborhood.

(b) In addition, notwithstanding the date of installation, the regulations of this division (F) shall apply to all private swimming pools located in the town, and shall apply jointly and severally to land owners, contract purchasers, tenants, or anyone who resides on the premises where the private swimming pool is located.

(6) *Appeal.*

(a) A person aggrieved by the Building Commissioner's refusal to issue a building permit for a private swimming pool, or aggrieved by the conditions imposed by the Building Commissioner in connection with the grant of any such permit, may appeal to the Board of Zoning Appeals.

(b) An appeal under this division (F)(6) shall be brought within 30 days after notice of the Building Commissioner's decision, and shall be heard and determined by the Board of Zoning Appeals under § 153.067.

(G) *Above-ground swimming pools.* Above-ground swimming pools shall also be a permitted contingent use in a R1, R2, and R3 zone, subject to the conditions set forth in division (F) above, and subject to the following additional conditions:

(1) This division (G) regulating above-ground swimming pools shall apply to any above-ground pool or spa that is over two feet in depth and over 12 feet in diameter.

(2) As specifically set out in division (F)(4) above, the Building Commissioner may impose reasonable restrictions or covenants as a condition to the issuance of a building permit for an above-ground pool. Items that enhance the appearance of the above-ground pool and/or block or reduce its visibility to others may be required by the Building Commissioner. Such items shall include, but are not limited to, landscaping, fencing, decking, or any combination thereof.

(Prior Code, § 154.23) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982; Ord. 3-15-05, passed 3-15-2005; Ord. 06-21-05, passed 6-21-2005; Ord. 08-18-14, passed 8-18-2014; Ord. 07-15-19, passed 7-15-2019)

§ 153.029 CONDITIONAL USES.

(A) The following uses, or structural alterations thereto, which are classified as conditional uses, shall be permitted by the Board in any district (unless otherwise specified) in accordance with the procedure specified herein:

- (1) Artificial lake or private swimming pool;
- (2) Baseball park;
- (3) Cemetery or crematory;
- (4) Country club or golf course;
- (5) Fire station;
- (6) Public utilities building or right-of-way;
- (7) Railroad right-of-way, including buildings essential to the operation of railroads;
- (8) Sewage disposal or garbage disposal; and
- (9) The outdoor sale of automobiles.

(B) Upon receipt of an application for a conditional use by the Board, it shall be referred to the Commission for an investigation as to the manner in which the proposed location and character of the conditional use will affect the Master Plan of the town. The Commission shall report the results of its study of the proposal to the Board, and, if the report is favorable to the proposal, the Board may, after public hearing, grant a permit, including the imposition of conditions of use, which the Board deems essential to ensure that the conditional use is consistent with the spirit, purpose, and intent of this section, will not substantially and permanently injure the appropriate use of neighboring property, and will substantially serve the public convenience and welfare.

(Prior Code, § 154.24) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982; Ord. 5-18-04, passed 5-18-2004; Ord. 07-15-09, passed 7-15-2009)

§ 153.030 B2 SHOPPING CENTER DISTRICT.

(A) *Uses permitted.* The uses specifically stated or implied in § 153.027, in the B1 Local Business District, are permitted in the B2 Shopping Center District.

(B) *Location permitted and procedure.*

(1) Only in the B2 Shopping Center District when located on a tract of land not less than four acres in area and which lies wholly within a Shopping Center District on the zone map; and in accordance with a development plan for the entire tract approved by the Commission, following a public hearing, said tract being the first approved for this purpose within the designated limits of such Shopping Center District on the zone map.

(2) The Building Commissioner shall issue an improvement location permit for a B2 use, only following receipt of notice from the Commission that such use district has been approved as set forth herein. The area to be occupied by buildings in this District shall be 25% or less of the net area of the district.

(3) The location of the shopping center shall be on property which has an acceptable relationship to arterial thoroughfares. The Commission must satisfy itself as to the adequacy of the thoroughfares to carry the additional traffic engendered by the development.

(4) The plan for the proposed shopping center must present a unified and organized arrangement of buildings and service facilities which shall have a functional relationship to the properties comprising the planning development and the properties immediately adjacent to the proposed development.

(5) The applicant for a shopping center must satisfy the Commission of his or her financial ability to carry out the proposed plan, and shall prepare and submit a construction schedule acceptable to the Commission, which construction shall begin within a period of 18 months following approval by

the Commission and be carried to completion to 40% of the total plan within a period of three years following such approval.

(C) *Approval procedure.*

(1) The applicant for a shopping center in a B2 Shopping Center District shall prepare and submit a preliminary development plan and supporting data for review and tentative approval of the Commission, upon which plan the Commission shall hold a public hearing. Upon approval of the preliminary development plan, the applicant shall, within a period of six months, prepare and submit a final development plan for approval of the Commission which shall incorporate any changes or alterations requested by the Commission.

(2) In the exercise of its approval, the Commission shall impose such conditions regarding the location, character, and other features of the proposed shopping center as it may deem advisable, and shall give due regard to the following factors, as they will apply to the particular situation:

(a) The location, size, and use of all buildings and structures, the nature and intensity of the operations involved in or conducted in connection with the shopping center; its site layout, including the location, size, arrangement, and capacity of all area to be used for vehicular access, parking, loading, and unloading and its relation to streets giving access to it so that vehicular traffic to and from the center will not create undue hazards to the normal traffic of the vicinity; and

(b) The location, size, and arrangement of areas to be devoted to planting lawns, trees, and other purposes so that it will be harmonious with the neighborhood in which it is situated.

(3) In the event the applicant receiving the approval of the shopping center development plan for a designated location does not proceed with its construction as set forth above, the Commission shall require that the applicant show cause why such approval should not be revoked. Such action shall be taken by the Commission upon its own initiative or at the request of another interested party. If the Commission determines, following a public hearing, that the best interests of the community will not be served by the applicant continuing to hold the approval, it may revoke the same and thereafter grant an approval for another shopping center development within the designated location area. Such approval shall be subject to the same considerations.

(Prior Code, § 154.25) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.031 VEHICLE PARKING SPACE.

(A) *Specific requirements.* Sections 153.026 through 153.028 specify the off-street parking requirements for each type of use permitted under the provisions of this section.

(B) *Permits for parking lots in residential zones.* In order to meet requirements for vehicle parking space, where such space is not available on the lot occupied by a building, as specified in §§ 153.026 through 153.028 inclusive, the Board shall, after receipt of a favorable proposal, and after public notice and hearing, grant a permit for the establishment of a parking lot in a R2 District, provided that the entire area of the parking lot is within 300 feet of a B1 or B2 District, or, in the case of a building devoted to religious activities in a R2 District, immediately adjacent to such building, and provided that:

(1) There shall be no sales, dead storage, repair work, dismantling, or servicing of any kind on said parking lot;

(2) Entrances and exits shall be approved as to location by the Commission;

(3) No parking shall be permitted nearer than two feet from the front or side lot lines;

(4) Except for otherwise approved entrances and exits, a curb or rail not more than two feet in height and not less than eight inches in height shall be erected so as to conform with the required front lot line, and may be required along the boundaries of the parking lot as determined by the Commission for the protection of adjoining residentially zoned or used property;

(5) The lot shall be surfaced with a dust-proof or hard surface, meeting the standard specifications of the town;

(6) Lighting facilities, if provided, shall be so arranged as to be reflected away from property residentially zoned or used; and

(7) If at any time after the issuance of the required permits any of the provisions of this section are not complied with, the permits shall be revoked.

(Prior Code, § 154.26) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.032 UNIT DEVELOPMENT PLAN.

(A) The owner or owners of any tract of land, comprising an area of not less than ten acres, may submit to the Board a plan for the use and development of the land, primarily for residential purposes. The proposed development plan shall be submitted to the Commission for examination, study, and report, and for a public hearing. If the Commission approves the development plan, the plan, together with the recommendations of the Commission, shall be embodied in a report to the Board, stating the reasons for the approval of the plan and application, and specific evidence and facts showing that the proposed residential development plan has considered and made provision for the following essential elements:

(1) The appropriate use of property adjacent to the area that is included in the plan will be fully safeguarded;

(2) The plan is consistent with the intent of this chapter to promote public health, safety, and the general welfare;

(3) The buildings shall be used primarily for single-family dwellings, and the usual accessory buildings such as garages, storage space, and community activity; and

(4) That the area of the tract, excluding street area, is to be devoted to parks, parkways, and other open spaces, will provide the minimum lot area per family, counting all families to be housed under the unit development plan, which is required for the most intensive use normally permitted in the district in which such development is to be located.

(B) If the Board approves the proposed residential development plan, improvement location permits and certificates shall be issued even though the use of this land, the location of the buildings to be erected in the area, and the yards and open spaces provided in the plan do not conform in certain respects to the regulations for the district in which the development is to be located.

(Prior Code, § 154.27) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.033 NONCONFORMING USE SPECIFICATIONS.

(A) *Continuation thereof and reconstructions.* The lawful use of a building or premises, existing at the time of passage of this section, may be continued although such use does not conform to all the provisions of this section, except as hereinafter provided.

(B) *Extension.* A nonconforming use may be extended throughout a building, provided no structural alterations are made therein, except those required by law.

(C) *Change.* A nonconforming use may be changed to another nonconforming use of the same or greater restrictions, provided no structural changes are made in the building. Whenever a nonconforming use has been changed to a conforming use or to a use permitted in a district of greater restrictions, it shall not thereafter be changed to a nonconforming use of a less restricted one.

(D) *Erection and re-erection of a building.* No building shall be erected upon any premises devoted to a nonconforming use, and no building located upon any such premises, which has been damaged by fire or other causes to the extent of more than 75% of its appraised valuation, shall be repaired or rebuilt, except in conformity with the regulations of this section.

(E) *Temporary permits.* The Board shall authorize, by written permit, in a residence district for a period of not more than one year from the date of such permit, a temporary building for commercial use incidental to the residential construction and development of said district.

(F) *Right to construct if permit issued.* Nothing herein contained shall require any change in the plans, construction, or designated use of a building for which a building permit has been heretofore issued and the construction of which has been diligently prosecuted within 90 days of the date of such permit, and which entire building shall be completed according to such plans, as filed within three years from the date of passage of this section.

(G) *Use to conform after discontinuance.* In the event that a nonconforming use of any building or premises is discontinued for a period of one year, the use of the same shall thereafter conform to the uses permitted in the district in which it is located.

(H) *Discontinuance of nonconforming use of land.* The lawful open use of land which does not conform to the provisions of this section shall be discontinued within five years from the date of passage of this section, and the use of land for storage purposes, which may become a nonconforming use by reason of amendment to this section shall be discontinued within five years from the date of passage of such amendment.

(I) *Nonconforming use created by amendment.* These provisions apply in the same manner to a use which may become a nonconforming use due to a later amendment to this section.
(Prior Code, § 154.28) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.034 ADMINISTRATION.

(A) *Enforcement.* The Building Commissioner is designated and authorized to enforce this chapter.

(B) *Plats.* Each application for an improvement location permit shall be accompanied by a plat, in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size and location of the building to be erected, reconstructed, or structurally altered, and such other information as shall be necessary to provide for the enforcement of this chapter. The plat shall also contain or be accompanied by a legal description of the real estate involved. A careful record shall be kept of all such applications and plats, in the office of the Building Commissioner.

(C) *Certificate of occupancy.*

(1) No land shall be occupied or used, and no building hereafter erected, reconstructed, or structurally altered shall be occupied or used, in whole or in part, for any purpose whatsoever, until a certificate of occupancy shall have been issued by the Building Commissioner stating that the building

and use comply with all of the provisions of this chapter applicable to the building or premises, or the use in the district in which it is to be located.

(2) No change in use shall be made in any building or part thereof, now or hereafter erected, reconstructed, or structurally altered, without a certificate of occupancy having been issued by the Building Commissioner, and no such permit shall be issued to make such change unless it is in conformity with the provisions of this chapter.

(3) A certificate of occupancy shall be applied for coincidentally with the application for an improvement location permit and shall be issued within ten days after the lawful erection, reconstruction, or structural alteration of such building shall have been completed.

(4) A record of all certificates of occupancy shall be kept on file in the office of the Building Commissioner and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building or land affected. A fee of \$1 shall be charged for each original certificate and \$0.50 for each copy thereof.

(5) No improvement location permit shall be issued for excavation or for the erection, reconstruction, or structural alteration of any building before application has been made for a certificate of occupancy.

(D) *Improvement location permit.*

(1) No excavation, erection, reconstruction, or structural alteration of any building shall be made before an improvement location permit is issued by the Building Commissioner, or his or her delegate.

(2) Detailed site plans made to scale must be submitted to the Town Hall for the Building Commissioner, or his or her delegate, to review for meeting all building requirements in the town.

(3) After reviewing the plans, the Building Commissioner, or his or her delegate, must approve the plans before an improvement location permit is issued at the Town Hall.

(4) The person submitting the plans will be notified of the decision of the Building Commissioner, or his or her delegate.

(5) The application fee for obtaining an improvement location permit for a new building is \$100 and for remodeling or alterations to an existing building is \$50, payable at the Town Hall.

(6) The improvement location permit must be posted in a prominent place at the residence during the entire period of construction.

(7) Improvement location permits are valid for no more than 12 months after the issue date. (Prior Code, § 154.30) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982; Ord. 3-19-1996, passed 3-19-1996; Ord. 9-9-1999, passed 9-9-1999)

SIGNS

§ 153.045 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING SURFACE. The total surface of a building face to which a sign is attached.

CONSTRUCTION SIGNS. Any sign announcing the names of architects, engineers, contractors, or other individuals or firms involved with the construction, alteration, or repair of a building project or announcing the character of the building enterprise or the purpose for which the project is intended.

DIRECTIONAL OR WARNING SIGN. An on-premises sign in front of the building containing information relative to expediting pedestrian or vehicular traffic flow and parking.

DRIVEWAY VISION CORNER CLEARANCE. A triangular space at the intersection of the driveway and adjoining property line. The triangular space is determined by a diagonal line connecting two points measured 15 feet equidistant from the point of intersection along the property line and the driveway, then connecting those two points to form a triangle. No mobile signs shall be permitted in this triangular space.

EMBELLISHMENT. Letters, figures, characters, or representatives in irregular form which are to be used as a supplement to the primary sign structure.

ENTRANCE SIGN. A sign used to identify a planned district or platted subdivision with the intention of providing knowledge about the complete project and not a single entity or unit.

FACIA SIGN. A sign attached to, or erected against, a wall of a building.

FREESTANDING BUILDING. An independent building which is physically separated from any other structures on the same parcel and is further identified by its own parking lot, and landscaping layout, circulation flow, and other features which qualify a building as a complete independent unit.

FRONTAGE. The length of the property line of any parcel along each street which it borders.

GROUND SIGN. A low-profile, on-premises sign completely or principally self-supported by posts or other sign apparatus independent of any building or other structure.

HEIGHT OF SIGN. The vertical distance measured from the base ground level to the highest point of the sign.

IDENTIFICATION SIGN. Any permanently attached, freestanding, roof, or projecting on-premises sign which advertises or identifies the premises where a business, service, or activity is located.

INSTITUTION SIGN. An on-premises sign identifying a society, corporation, or group facility of a public character.

MARQUEE SIGN. A sign displayed, erected, or supported upon an overhanging marquee, canopy, awning, or other similar cover or shelter.

MOBILE SIGN. A sign which is designed to be moved from one location to another and is not intended to remain as a permanent sign.

MULTI-FACED SIGN. Any sign in a three-dimensional configuration, including, but not limited to, cubes, spheres, and cylinders.

OFFICE SIGN. An on-premises sign in a B1 or B2 Zone District not exceeding 32 square feet in area.

OFF-PREMISES SIGN. A sign which directs attention to a use, business, project, service, or activity not conducted, sold, or offered upon the premises where the sign is located.

ON-PREMISES SIGN. Any sign identifying or advertising a business, person, activity, goods, project, or service located on the premises where the sign is installed.

PAINTED GRAPHICS. Any advertisement painted directly onto the wall of a building.

POLE SIGN. A high-profile, on-premises sign completely and principally self-supported by posts or other sign apparatus independent of any building or other structure.

POLITICAL SIGN. Any temporary sign pertaining to an election, or a referendum, or carrying the picture or name of a person seeking election or appointment to a public office.

PROJECTING SIGN. A sign which is affixed to any building, wall, or structure and extends greater than 18 inches beyond the building wall or parts thereof, and extending wholly or partly beyond the surface of the portion of the building or structure to which it is attached; or extending beyond the building line; or over public property. **PROJECTING SIGNS** are not allowed in any zoning district.

PUBLIC SERVICE SIGN. Signs of a public, noncommercial nature, to include safety signs, trespassing signs, traffic signs, signs indicating scenic or historical points of interest, memorial plaques and the like, and all signs erected by, or on order of, a public office in the performance of a public duty.

RENTAL AGENCY. Any person, firm, corporation, or organization which provides, by lease or otherwise, a mobile sign to any other person, firm, corporation, or organization.

RIGHT-OF-WAY. The portion of real property reserved and appropriated by the town or any other governmental unit to be used for easements for utility purposes or street improvements. In determining the boundary lines of real property located within the town, such lines shall not extend into any legal **RIGHT-OF-WAY**.

ROOF SIGN. A sign erected upon or above a roof or parapet of a building.

SHOPPING CENTER SIGN. An on-premises sign identifying a shopping center.

SIGN. Any identification, description, illustration, or device which is in view of the general public and which directs attention to a person, place, commodity, activity, institution, organization, or business. **SIGN** shall include any and all supportive apparatus used in connection with the identification, description, illustration, or device.

TEMPORARY SIGN. A sign which is not permanently installed, such as an advertising display constructed of cloth, canvas, light fabric, cardboard, or other light material.

WALL SIGN. An on-premises sign attached to, or erected against, a wall of a building or structure. (Prior Code, § 154.29) (Ord. 9-9-1999, passed 9-9-1999; Ord. 11-16-1999A, passed 11-16-1999)

§ 153.046 REQUIREMENTS.

(A) *General requirements.* Signs may be erected and maintained as long as the requirements of this subchapter and all applicable ordinances and codes of the town, state, and federal government are met.

(1) *Permit requirements.* Improvement location permits shall be obtained prior to placement of any new sign, in any zone, including mobile signs, excepting those signs which are otherwise exempted by this subchapter.

(2) *Application requirements.* The application for an improvement location permit shall require a site plan and set forth the name, address, and telephone number of the individual, corporation, or business responsible for repair and maintenance of the sign.

(3) *Traffic hazard.* Any sign that is deemed a traffic hazard because it obstructs the view of any approaching road or intersection, railroad, school playground or park, or pedestrian crosswalk, or contributes to any other situation which may endanger the health and welfare of any pedestrian or occupant of any vehicle shall be prohibited.

(4) *Lighting.* Lights used to illuminate signs shall be installed, shielded, and directed not to be directly visible from any public street or adjacent residentially used property at grade level. All artificial illumination shall be so designed, located, and shielded, and directed as to concentrate illumination only on the sign face and to prevent the casting of glare or direct light upon adjacent properties or street.

(5) *Obsolete signs.* A sign face which advertises a product or service no longer available on the premises of a business, or which advertises a business which has closed permanently, or which has moved from the business location on which the sign is located, must be removed within one month from the happening of the event which renders the sign face obsolete.

(6) *Area of a sign.*

(a) *Single-faced signs.* The area shall be determined by the smallest circle, triangle, or rectangle that can be used to enclose the sign, exclusive of supporting members that bear no message.

(b) *Double-faced signs.* The area of these signs shall be determined in the same manner as single-faced signs and shall be allowed on each side, provided that the facings are back-to-back. A V-type sign may be permitted, if the greatest point of separation between sign faces does not exceed 15 feet.

(c) *Multi-faced signs.* Area shall be determined by the smallest circle, triangle, or rectangle that can be used to enclose the largest single surface or largest cross-section of the sign, exclusive of supporting members that bear no message.

(7) *Nonconforming signs.*

(a) *Lawful nonconforming signs.* All permanently attached or affixed signs legally existing prior to the enactment of this subchapter shall be regarded as lawful nonconforming signs and may be continued, subject to being properly repaired and maintained, so long as the existing sign is not expanded in size or relocated, unless the expansion or relocation brings the sign into conformity with this subchapter, and so long as no additional signs are placed on the same sign apparatus upon which the existing sign is located.

(b) *Destroyed sign.* Whenever an existing lawful nonconforming sign and apparatus located in any zone district, except the floodway or floodway fringe district, shall be destroyed by more than 50% of its replacement value, by explosion, fire, windstorm, flood, earthquake, act of God, riot, or act

of public enemy, the sign and apparatus shall be reinstated only in compliance with the provisions of this subchapter.

(c) *Permitted alterations.* Nothing in the foregoing shall prevent ordinary maintenance: poster panel replacement; copy changes or lettering; repair; or the reconstruction and upgrading of the nonconforming signs, provided that there shall be no enlargement of size, or change of location of the signs unless the entire nonconforming sign and structure is brought into conformance with the provisions of this subchapter.

(8) *Abandoned signs.* Whenever it appears that a sign or sign structure has been abandoned or that an establishment advertised or identified by a sign or other identifying device is no longer in business, the Building Commissioner shall attempt to contact the owner and arrange for its removal. Failing this attempt, a notice shall be placed in the local newspaper which shall declare the intentions of the town to remove the sign. The advertisement shall run twice per week for two consecutive weeks; and if the sign is not removed, or suitable arrangements made for its removal, within 30 days of the first notice published, the Building Commissioner shall cause the sign to be removed at the owner's expense.

(B) *Permitted signs not requiring improvement location permit and allowable in all districts.* Except as may be otherwise specifically provided in this section, the following signs shall not require an improvement location permit: public or governmental signs, window signs, plaques, no trespassing, dumping, or hunting signs, political signs, directional signs, real estate signs, public information signs, and temporary signs.

(1) *Directional or warning sign.* If the sign is illuminated, the light source shall not be directed towards any street or any adjoining property in a residence zone. Signs identifying ingress and egress points of a property shall be placed in such a manner as not to interfere with the visibility of motorists or pedestrians.

(2) *Political sign.* A political sign shall be removed within 30 days following the election. A winning candidate in a primary election may maintain his or her sign until 30 days following the general election. The person responsible for the removal of a political sign shall be the owner of the property upon which the political sign is located. If these signs are not removed within a specified time period, the Building Commissioner shall initiate action for removal of the sign.

(3) *Public service sign.* A public service sign can be any specially licensed sign, permitted by a legislative body, by franchise, or by special license such as a sign on a bus, bench, or trash receptacle. A public service sign may be a sign established by a public service agency as an aid to safety or service. A public service sign may also be a governmental or traffic sign.

(C) *On-premises signs.* In addition to all other requirements and limitations provided for in this section, the following provisions designate maximum sign areas, districts in which signs may be permitted, sign locations, and separation distances required.

(1) *Construction signs.* Construction signs having a maximum area of 100 square feet shall be permitted in all districts and shall be limited to one sign per entrance for each parcel of land, provided that an improvement location permit shall be required prior to placement. Each sign shall be removed within two months after construction is substantially completed.

(2) *Entrance signs.* Entrance signs which identify a shopping center shall be permitted in B1 and B2 Zoning Districts and shall be permitted to be placed on each side of the ingress point, provided that the combined area of each sign does not exceed nine square feet. One entrance sign to shopping centers shall be permitted to be placed on each thoroughfare at the entrance to the shopping center.

(3) *Facia signs.* Coverage up to 30% of all wall surface upon which the sign is located is permitted in B1 and B2 Districts; and a permit is required.

(4) *Identification signs.* Identification signs shall be permitted in all zoning districts, provided that placement of the signs shall be subject to the obtaining of an improvement location permit.

(5) *Shopping center signs.* Shopping center signs shall be permitted in B1 and B2 Zoning Districts. Roof signs shall not be permitted. Projecting signs are not permitted. An improvement location permit shall be required prior to placement of the shopping center signs.

(6) *Office signs.* Office signs are permitted in B1 and B2 Districts. An improvement location permit shall be required prior to placement of the signs.

(7) *Institutional signs.* One sign is permitted per frontage in all zoning districts; and a permit is required.

(8) *Mobile sign.*

(a) Mobile signs are permitted in R1, R2, and R3 Zone Districts for a maximum of seven days per year. In B1 and B2 Zone Districts, mobile signs are permitted for a maximum of one month per year. In the enforcement of this provision, the replacement of a mobile sign with any other mobile sign shall not extend the time limitations set forth herein.

(b) Regardless of parcel size, only one mobile sign shall be permitted on a parcel of land at one time.

(c) The maximum area of display surface on a mobile sign shall be 32 square feet in area, and no such sign shall be converted to a permanent sign or have any flashing lights.

(d) A mobile sign shall not be located in the vision clearance on corner lots and/or the driveway vision corner clearance of a lot or on the right-of-way of any governmental unit. The sign shall be located no closer than five feet from any existing street or highway right-of-way.

(e) All electric lines running to or from the mobile sign shall not cross or be upon any roadway, driveway, or pedestrian walkway of any kind.

(f) A rental agent and/or sign owner must secure an improvement location permit for a mobile sign on forms provided by the town prior to the placement of a mobile sign. The permit shall be displayed at all times in a clear weatherproof display window which shall be made a part of the sign.

(g) In lieu of the filing fees required to obtain an improvement location permit provided in § 153.034, the rental agent and/or sign owner shall pay a user and inspection fee of \$5 for any mobile sign placed for a period not to exceed two weeks, and a fee of \$10 for any mobile sign placed for a period of more than two weeks, but not to exceed three months period of time. Provided however, that if a mobile sign is placed prior to obtaining an improvement location permit, the user and inspection fee shall be \$25.

(h) All mobile signs in existence on the date of the passage of this section shall have three months from said date to come into full compliance with the requirements set forth herein. However, all signs which have flashing lights or apparatus shall cease flashing upon January 1, 2000. Further, all existing mobile signs shall abide by the placement requirements upon January 1, 2000.

(i) In addition to any other penalties set forth in the Zoning Code, any rental agent and/or sign owner who is found in violation of the terms and conditions of this chapter three or more times in any one calendar year shall not be issued any additional permits for that year.

(D) *Permitted signs requiring improvement location permit.* In addition to the above mentioned signs that require an improvement location permit, the following are allowable in B1 and B2 Zoning Districts.

(1) *Ground signs.*

(a) A ground sign shall not be at any point over six feet in height above grade level.

(b) Lighting reflectors shall not be more than six feet away from the ground sign which they are designed to illuminate.

(c) An improvement location permit shall be obtained prior to the placement of a ground sign.

(2) *Wall sign.*

(a) A wall sign shall not project away from the wall more than 18 inches. When a wall sign is located over a sidewalk and projects more than six inches over the pedestrian area, the minimum distance from the sidewalk grade and the base of the sign shall be eight feet. A wall sign placed on a

building of one story shall not project more than two feet above the top of the wall or two feet beyond the ends of the wall to which it is attached.

(b) If the wall sign is an illuminated one, overhead lighting reflectors may project six feet beyond the building line. All reflectors extending over the sidewalk shall be secured and safely anchored.

(c) No wall sign shall be so erected as to prevent free ingress to or egress from the building, or any fire escape.

(d) An improvement location permit shall be obtained prior to the placement of a wall sign. (Prior Code, § 154.29) (Ord. 9-9-1999, passed 9-9-1999; Ord. 11-16-1999A, passed 11-16-1999)

§ 153.047 PROHIBITED SIGNS.

The following signs shall not be permitted under any circumstance:

(A) Signs bearing statements, words, or pictures which relate to sexual matters of an obscene and indecent character, such as would be patently offensive by contemporary standards;

(B) Signs which, because of size, location, coloring, content, or illumination, bear a close resemblance to, or may appear to be an imitation of, highway traffic signs or signals; or signs which incorporate, in any manner, a flashing or moving apparatus that may create a traffic hazard;

(C) Signs which interfere with the view of any signal, traffic sign, or street sign;

(D) Inactive signs or sign apparatus, as defined in this subchapter;

(E) Deteriorated, leaning, derelict, or structurally unsafe signs which constitute hazards by reason of inadequate maintenance, age, or abandonment, as defined in this subchapter;

(F) Signs on trees, telephone or light poles, fences, and on city streets or rights-of-way, alleys, or sidewalks;

(G) Signs which obstruct ingress and egress from a door, window, fire escape, or exit;

(H) Signs which are unlawfully erected or maintained;

(I) Off-premises signs;

(J) Pole sign;

(K) Projecting sign; and

(L) Marquee sign.

(Prior Code, § 154.29) (Ord. 9-9-1999, passed 9-9-1999; Ord. 11-16-1999A, passed 11-16-1999)
Penalty, see § 153.999

§ 153.048 ENFORCEMENT.

The Building Commissioner shall have the authority to enforce all the provisions of this subchapter. Action on the violation of any provision of this subchapter shall be subject to the authority granted to municipalities by the provisions of I.C. Title 36, and all acts amendatory thereto. Provided further, the Building Commissioner may institute a suit for injunction in a court of competent jurisdiction to restrain any person, persons, firm, or corporation from violating the provisions of this subchapter, and may also institute a suit for a mandatory injunction directing removal of any sign erected or maintained in violation of the terms of this subchapter.

(Prior Code, § 154.29) (Ord. 9-9-1999, passed 9-9-1999; Ord. 11-16-1999A, passed 11-16-1999)

§ 153.049 APPEALS.

(A) This subchapter shall be deemed an amendment to the Zoning Code and the development plan for the town, and is enacted to assist in the accomplishment of the purposes of the advisory planning law.

(B) An appeal from any person, persons, firm, or corporation claiming to be adversely affected by any decision of the Building Commissioner concerning a requirement of this subchapter shall be taken to the Board of Zoning Appeals of the town.

(C) In considering the appeal, the Board of Zoning Appeals shall have the power, amongst others, to reverse, modify, or approve the decision of the Building Commissioner, or may grant a variance from the requirements of this subchapter as equity may require.

(D) Any final decision by the Board of Zoning Appeals shall be reviewed by certiorari as prescribed by law.

(Prior Code, § 154.29) (Ord. 9-9-1999, passed 9-9-1999; Ord. 11-16-1999A, passed 11-16-1999)

§ 153.050 VIOLATIONS.

(A) The Commission, the Building Commissioner, or any designated enforcement official, or any person jointly or severally aggrieved, shall institute a suit for injunction in the Circuit or Superior Courts

of the county to restrain an individual or a governmental unit from violating the provisions of this Zoning Code.

(B) The Commission or the Board shall also institute a suit for mandatory injunction directing any person or a governmental unit to remove a structure provision of this Zoning Code.

(C) Any building erected, raised, or converted, or land or premises used in violation of any provisions of this Zoning Code or the requirements thereof, is declared to be a common nuisance, and as such, shall be abated in such manner as nuisances are now or may hereafter be abated under existing law.

(Prior Code, § 154.29) (Ord. 9-9-1999, passed 9-9-1999; Ord. 11-16-1999A, passed 11-16-1999)

BOARD OF ZONING APPEALS

§ 153.065 ESTABLISHMENT.

The Board of Zoning Appeals is established.

(Prior Code, § 154.40) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.066 APPEALS FROM BUILDING COMMISSIONER.

Any decision of the Building Commissioner made in enforcement of this chapter may be appealed to the Board by any person claiming to be adversely affected by such decision.

(Prior Code, § 154.41) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.067 POWERS AND DUTIES OF THE BOARD.

(A) The Board shall have the following powers, and it shall be its duty to:

(1) Hear and determine appeals from and review any order, requirements, decision, or determination made by the Building Commissioner in the enforcement of this chapter;

(2) Hear and decide on permits for conditional uses, development plans, or other uses upon which the Board is required to act under this chapter; and

(3) Authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions, fully demonstrated on the basis of the facts presented, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(B) In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from as in its opinion ought to be done in the premises, and to that end shall have all the powers of the Building Commissioner from whom the appeal is taken.

(Prior Code, § 154.42) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.068 RESTRICTIONS ON BOARD ACTION.

(A) Every decision of the Board shall be subject to review by certiorari procedure.

(B) No variance in the application of the provisions of this chapter shall be made by the Board relating to buildings, land, or premises now existing or to be constructed, unless after a public hearing, the Board shall find that such variance will not:

- (1) Alter the land use characteristics of the district;
- (2) Impair the adequate supply of light and air to adjacent property;
- (3) Increase the hazard from fire, flood, and other damage to said property;
- (4) Diminish the marketable value of adjacent lands and buildings;
- (5) Increase the congestion in the public streets; or

(6) Otherwise impair the public health, safety, convenience, comfort, or general welfare.

(Prior Code, § 154.43) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.069 AMENDMENTS.

All amendments to this chapter shall be in conformance with I.C. 36-7-4-100 et seq., and as amended. Any proposed amendment shall be submitted to the Commission for report and

recommendation prior to any action thereon by the Board. If the Commission recommends against the enactment of any proposed amendment, it shall become effective only by a three-fourths vote of the Board.

(Prior Code, § 154.44) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

§ 153.070 REMEDIES.

The Commission, the Board, the Building Commissioner, or any designated enforcement official, or any person, may institute a suit for injunction in the County Circuit Court to restrain an individual or a governmental unit from violating the provisions of this chapter. The Commission or the Board may also institute a suit for mandatory injunction directing any person to remove a structure erected in violation of the provisions of this chapter. Any building erected, raised, or converted, or land or premises used in violation of any provisions of the chapter or the requirements thereof, is declared to be a common nuisance and as such, may be abated in such manner as nuisances are now or may hereafter be abated under existing law.

(Prior Code, § 154.45) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982)

AVAILABILITY FOR PUBLIC INSPECTION

§ 153.085 DUTY OF CLERK-TREASURER.

The Clerk-Treasurer is directed to keep on file two copies of the zoning map referred to in § 153.024, and of the specifications referred to in § 153.025, and the map and specifications shall be available for public inspection during all regular office hours of the Clerk-Treasurer.

(Prior Code, § 154.50)

COMPREHENSIVE PLAN

§ 153.100 CLARIFICATION.

(A) This subchapter shall be cited as the “Town Comprehensive Plan.”

(B) *COMMISSION* in this subchapter means Town Plan Commission.
(Prior Code, § 154.60) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.101 PURPOSE.

The purpose of this subchapter is to establish a single unified code consisting of all plans, reports, and code sections plus supplemental details as contained in the report of the Commission entitled “Comprehensive Plan of the Town,” that deal with the subject of planning and zoning, as a comprehensive guide to the future growth and development of the town.
(Prior Code, § 154.61) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.102 CONTENT.

The Comprehensive Plan consists of a report dated August, 1961, entitled “Master Plan of the Town of Edgewood, Indiana,” a separate plan entitled “Comprehensive Development Plan,” and Edgewood Zoning Code, Chapter 153.
(Prior Code, § 154.62) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.103 AUTHORITY OF THE COMPREHENSIVE PLAN.

The layout, the location, relocation, extension, or widening of thoroughfares; the general design of neighborhoods and their street patterns; the use of land; and the location of sites for schools, parks, recreation, and other public uses, shopping centers, and community facilities shall conform to the principles, policies, and provisions of the Comprehensive Plan.
(Prior Code, § 154.63) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.104 ACT OF THE COMPREHENSIVE PLAN.

The Town Council shall be guided by, and give consideration to, the general policy and pattern of development set out in the Comprehensive Plan prior to the authorization, construction, alteration, or abandonment of any public installation required or necessitated in the interest of the physical development of the town and its environs.
(Prior Code, § 154.64) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.105 CONTINUING AUTHORITY OF THE COMMISSION.

The Commission shall, from time to time, consider and review proposals with respect to changes and amendments in the Comprehensive Plan and, upon conclusion of such consideration, including a public hearing thereon, shall certify to the Town Council its report on such matters.

(Prior Code, § 154.65) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.106 COMPREHENSIVE PLAN ON FILE.

The maps, charts, plans, and code sections that comprise the master plan (i.e., the Comprehensive Plan) are on file in the office of the Clerk-Treasurer, and are available for public inspection during all regular office hours of the Clerk-Treasurer.

(Prior Code, § 154.66) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.107 RESPONSIBILITY OF THE CLERK-TREASURER.

The Clerk-Treasurer is ordered and directed to keep on file, for public inspection during all regular office hours, two copies of the Comprehensive Plan, including maps, charts, plans, and sections referred to herein.

(Prior Code, § 154.67) (Ord. P-6, passed 4-10-1962; Ord. P-7, passed 11-21-1967; Ord. P-9, passed 6-17-1969)

§ 153.999 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person who violates the provisions of § 153.008(F) shall be fined an amount up to \$500. Each day any violation continues, or is permitted to exist, constitutes a separate offense.

(Prior Code, § 154.23) (Ord. P-2, passed 5-24-1961; Ord. P-9, passed 6-17-1969; Ord. 10-D-81, passed 6-15-1982; Ord. 3-15-05, passed 3-15-2005; Ord. 06-21-05, passed 6-21-2005; Ord. 08-18-14, passed 8-8-2014; Ord. 07-15-19, passed 7-15-2019)

(C) Action on the violation of any provisions of §§ 153.045 through 153.050 and the right of injunction against such violations shall be as provided by Chapter 174, Acts of 1974, and all acts

amendatory thereto, General Assembly of the State of Indiana. Under statute, any person or persons, firm, or corporation who violates a provision of this chapter shall be guilty of a Class C infraction and, upon conviction, shall be fined not less than \$10 nor more than \$300. In the event the offense or violation is continuing, extending from one day to the next, a separate offense or violation shall be deemed to have been committed each day involved, and shall be subject to a separate penalty hereunder. (Prior Code, § 154.29) (Ord. 9-9-1999, passed 9-9-1999; Ord. 11-16-1999A, passed 11-16-1999)

