# Town of Osceola Zoning Ordinance

## TABLE OF CONTENTS

### Chapter 1 Provisions of Common Applicability

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.01</td>
<td>Title</td>
</tr>
<tr>
<td>1.02</td>
<td>Statutory Authority</td>
</tr>
<tr>
<td>1.03</td>
<td>Purpose</td>
</tr>
<tr>
<td>1.04</td>
<td>Findings for Adoption of this Ordinance</td>
</tr>
<tr>
<td>1.05</td>
<td>Effective Date of Ordinance</td>
</tr>
<tr>
<td>1.06</td>
<td>Prior or Conflicting Ordinances</td>
</tr>
<tr>
<td>1.07</td>
<td>Separability</td>
</tr>
<tr>
<td>1.08</td>
<td>Eminent Domain or Use</td>
</tr>
<tr>
<td>1.09</td>
<td>Interpretation of this Ordinance / Conflict with Other Ordinances</td>
</tr>
<tr>
<td>1.10</td>
<td>Jurisdiction</td>
</tr>
<tr>
<td>1.11</td>
<td>Subdivision of Land</td>
</tr>
<tr>
<td>1.12</td>
<td>Scope and Application</td>
</tr>
<tr>
<td>1.13</td>
<td>Private Provisions</td>
</tr>
<tr>
<td>1.14</td>
<td>Determination of Land Uses not listed in this Ordinance</td>
</tr>
<tr>
<td>1.15</td>
<td>Saving Provision for Pending Enforcement Actions</td>
</tr>
<tr>
<td>1.16</td>
<td>Transition Rules</td>
</tr>
<tr>
<td>1.17</td>
<td>Amendments to this Chapter</td>
</tr>
<tr>
<td>1.18</td>
<td>Compliance Required for Use and Development of Real Property</td>
</tr>
<tr>
<td>1.19</td>
<td>Exemptions for Transportation, Communication and Utility Lines</td>
</tr>
<tr>
<td>1.20</td>
<td>Clear Sight Area Requirements</td>
</tr>
<tr>
<td>1.21</td>
<td>Number of Buildings on a Lot</td>
</tr>
<tr>
<td>1.22</td>
<td>Access to Lots and Parcels</td>
</tr>
<tr>
<td>1.23</td>
<td>Requirements for All Private Streets and Private Alleys</td>
</tr>
<tr>
<td>1.24</td>
<td>Additional Setback Provisions</td>
</tr>
<tr>
<td>1.25</td>
<td>Exemption for Anti-Terrorism Devices and Portable Towers</td>
</tr>
<tr>
<td>1.26</td>
<td>Environmental Performance Standards</td>
</tr>
<tr>
<td>1.27</td>
<td>Height Regulations for Roof Mounted or Roof Piercing Structures</td>
</tr>
<tr>
<td>1.28</td>
<td>Wetlands</td>
</tr>
<tr>
<td>1.29</td>
<td>Greenway Connection</td>
</tr>
<tr>
<td>1.30</td>
<td>Existing Buildings and Structures – Exemption from Development Standards</td>
</tr>
</tbody>
</table>

### Chapter 2 Zoning Districts and Zone Maps

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.01</td>
<td>Establishment of Districts</td>
</tr>
<tr>
<td>2.02</td>
<td>Order of Districts</td>
</tr>
<tr>
<td>2.03</td>
<td>Official Zone Map</td>
</tr>
<tr>
<td>2.04</td>
<td>Identification of the Official Zone Map</td>
</tr>
</tbody>
</table>
Table of Contents

Section 2.05   Official Zone Map Changes
Section 2.06   Retention and Preservation of Record
Section 2.07   Interpretation of the Official Zone Map
Section 2.08   Zoning of Newly Annexed Land to the Town
Section 2.10   Zoning Violations in All Zoning Districts.

Chapter 3   Nonconforming Lots, Uses, Buildings, Structures or Signs

Section 3.01   Intent
Section 3.02   Certificate of Legally Established Nonconforming Use of Land
Section 3.03   Incompatibility of Legally Established Nonconforming Uses
Section 3.04   Avoidance of Undue Hardship
Section 3.05   Legally Established Nonconforming Lots
Section 3.06   Legally Established Nonconforming Buildings or Structures (Excluding Signs)
Section 3.07   Legally Established Nonconforming Uses of Land
Section 3.08   Discontinuation of Legally Established Nonconforming Uses of Land
Section 3.09   Legally Established Nonconforming Uses within Legally Established Nonconforming Buildings or Structures
Section 3.10   Repairs and Maintenance of Legally Established Nonconforming Buildings or Structures (Excluding Signs)
Section 3.11   Legally Established Nonconforming Signs
Section 3.12   Determination of Cost of Construction
Section 3.13   Reconstruction, Remodeling or Enlargement of a Legally Established Nonconforming Single Family Dwelling or Two Family Dwelling
Section 3.14   Additions Along a Legally Established Nonconforming Setback.

Chapter 4   Zoning Districts

Section 4.01   R1 Single Family District
Section 4.02   R2 Multi Family District
Section 4.03   OB Office Buffer
Section 4.04   C Commercial District
Section 4.05   I Industrial District
Section 4.06   Reserved
Section 4.07   Reserved
Section 4.08   Table of Official Uses

Chapter 5   Accessory and Temporary Uses, Buildings and Structures

Section 5.01   Accessory Uses, Buildings and Structures
Section 5.02   Temporary Uses, Buildings and Structures

Chapter 6   Reserved
Chapter 7  Planned Unit Development District

Section 7.01  Intent
Section 7.02  Permitted Uses and Development Standards
Section 7.03  Procedure for Approval of a Planned Unit Development
Section 7.04  Filing and Review of a Concept Plan
Section 7.05  Filing Petition for Zone Map Change
Section 7.06  Filing and Review of Preliminary Plan
Section 7.07  Secondary Approval
Section 7.08  Modification of Preliminary Plan or Secondary Approval
Section 7.09  Secondary Plat Approval
Section 7.10  Maintenance of Common Open Space
Section 7.11  Appeals from Executive Director’s Decisions

Chapter 8  Landscape Regulations

Section 8.01  Intent
Section 8.02  General Provisions
Section 8.03  Perimeter Yard Landscaping
Section 8.04  Building Foundation Landscaping
Section 8.05  Interior Off-Street Parking Area Landscaping
Section 8.06  Perimeter Off-Street Parking Area Screening
Section 8.07  Minimum Plant Sizes
Section 8.08  Installation and Maintenance of Landscaping

Chapter 9  Lighting Regulations

Section 9.01  Intent
Section 9.02  General requirements
Section 9.03  Special Regulations for Sport and Athletic Field Lights
Section 9.04  Exempt Lights
Section 9.05  Temporary Lights
Section 9.06  Prohibited Lights

Chapter 10  Sign Regulations

Section 10.01  Intent
Section 10.02  General Provisions
Section 10.03  Types of Signs
Section 10.04  Calculation of Sign Surface Area
Section 10.05  Changeable Copy Signs
Section 10.06  Exempt Signs
Section 10.07  Prohibited signs
Section 10.08  Temporary Signs
<table>
<thead>
<tr>
<th>Chapter 11</th>
<th>Off-Street Parking and Loading Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 11.01</td>
<td>Intent</td>
</tr>
<tr>
<td>Section 11.02</td>
<td>Applicability</td>
</tr>
<tr>
<td>Section 11.03</td>
<td>Existing Parking Areas</td>
</tr>
<tr>
<td>Section 11.04</td>
<td>Location of Parking Areas</td>
</tr>
<tr>
<td>Section 11.05</td>
<td>Design and Construction of Off-Street Parking Areas</td>
</tr>
<tr>
<td>Section 11.06</td>
<td>Minimum Number of Required Off-Street Parking Spaces</td>
</tr>
<tr>
<td>Section 11.07</td>
<td>Bicycle Racks</td>
</tr>
<tr>
<td>Section 11.08</td>
<td>Off Street Loading Requirements</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 12</th>
<th>Additional Regulations for Specific Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 12.01</td>
<td>Regulations for Controlled Uses</td>
</tr>
<tr>
<td>Section 12.02</td>
<td>Standards for Manufactured Home Dwellings</td>
</tr>
<tr>
<td>Section 12.03</td>
<td>Regulations for Wireless Telecommunication Facilities</td>
</tr>
<tr>
<td>Section 12.04</td>
<td>Regulations for Wind Energy Conversion Systems</td>
</tr>
</tbody>
</table>

| Chapter 13 | Reserved |

<table>
<thead>
<tr>
<th>Chapter 14</th>
<th>Floodplain Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 14.01</td>
<td>Statutory Authorization</td>
</tr>
<tr>
<td>Section 14.02</td>
<td>Findings of Fact</td>
</tr>
<tr>
<td>Section 14.03</td>
<td>Statement of Purpose</td>
</tr>
<tr>
<td>Section 14.04</td>
<td>Objectives</td>
</tr>
<tr>
<td>Section 14.05</td>
<td>Prohibition on New Construction in the Floodplain</td>
</tr>
<tr>
<td>Section 14.06</td>
<td>Definitions</td>
</tr>
<tr>
<td>Section 14.07</td>
<td>General Provisions</td>
</tr>
<tr>
<td>Section 14.08</td>
<td>Administration</td>
</tr>
<tr>
<td>Section 14.09</td>
<td>Provisions for Flood Hazard Reduction</td>
</tr>
<tr>
<td>Section 14.10</td>
<td>Variance Procedures</td>
</tr>
<tr>
<td>Section 14.11</td>
<td>Severability</td>
</tr>
<tr>
<td>Section 14.12</td>
<td>Effective Date</td>
</tr>
</tbody>
</table>
Chapter 15  Administration

Section 15.01  Town Council
Section 15.02  Area Plan Commission
Section 15.03  Board of Zoning Appeals
Section 15.04  Staff Agencies

Chapter 16  Development Review Procedures

Section 16.01  Intent
Section 16.02  Improvement Location Permits
Section 16.03  Compliance with Other Laws, Ordinances, Rules, or Regulations
Section 16.04  Application Form and Plan Requirements
Section 16.05  Zoning Ordinance Amendment Procedures
Section 16.06  Variance and Special Exception Procedures
Section 16.07  Modification or Termination of Commitments

Chapter 17  Enforcement

Section 17.01  Authority
Section 17.02  Alleged Violations
Section 17.03  Responsibility for Violations
Section 17.04  Inspection of Property; Right of Entry
Section 17.05  Cease and Desist Order
Section 17.06  Violations
Section 17.07  Remedies or Penalties for Violation
Section 17.08  Fines
Section 17.09  Additional Remedies

Chapter 18  Fines

Section 19.01  Intent
Section 19.02  General Regulations
Section 19.03  Zoning Violation Fine Schedule

Chapter 19  Definitions

Section 19.01  Interpretation of Terms or Words
Section 19.02  Definitions
CHAPTER 1

PROVISIONS OF COMMON APPLICABILITY

Section 1.01 Title.

This Ordinance shall hereinafter be known and cited as "Town of Osceola Zoning Ordinance", and hereinafter referred to as the "Ordinance".

Section 1.02 Statutory Authority.

(A) This Ordinance is adopted pursuant to the authority contained in Indiana Code 36-7-4 et seq.

(B) Whenever any provision of this Ordinance refers to or cites a section of the Indiana Code, and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

Section 1.03 Purpose.

In adopting this Ordinance, the Council has given reasonable consideration to, among other things: the Comprehensive Plan; current conditions and the character of current structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the Town; and responsible development and growth of the Town, and hereby adopts this Ordinance for the purpose of:

(A) Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;

(B) Lessening or avoiding congestion in public ways;

(C) Promoting the public health, safety, comfort, morals, convenience, and general welfare;

(D) Guiding the future development of the Town;

(E) Ensuring that residential areas provide healthful surroundings for family life;

(F) Ensuring that the needs of business and industry be recognized in future growth;
Chapter 1
Provisions of Common Applicability

(G) Ensuring that growth be commensurate with and promote the efficient and economical use of public funds; and

(H) Otherwise accomplishing the purposes of Indiana Code 36-7-4 et seq.

Section 1.04 Findings for Adoption of this Ordinance.

The Council, in adopting this Ordinance, finds that the Ordinance has paid reasonable regard to:

(A) The general policies and patterns of development set out in the Comprehensive Plan for the Town;

(B) Current conditions and the character of current structures and uses in each district;

(C) The most desirable use for which the land in each district is adapted;

(D) The conservation of property values throughout the Town; and,

(E) The responsible development and growth of the Town.

Section 1.05 Effective Date.

This Ordinance shall be effective at 12:01 a.m., on January 1, 2015.

Section 1.06 Prior or Conflicting Ordinances.

The Zoning Ordinance for the Town of Osceola, St. Joseph County, Indiana, as previously adopted by the Council on the 21st day of February, 1994, as Ordinance No. 4-1994, and all amendments thereto, are repealed as of the effective date of this Ordinance.

Section 1.07 Separability.

It is hereby declared to be the intention of the Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance because the same would have been enacted without the incorporation into this Ordinance of such unconstitutional or invalid section, paragraph, sentence, clause, or phrase.
Section 1.08 Eminent Domain or Use.

Nothing in this Ordinance or in any rules, regulations, or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, Plan Commission, or Board of Zoning Appeals now or hereafter established, to restrict or regulate:

(1) United States of America. The exercise of the power of eminent domain by the United States of America or by any department or agency of the United States of America, or the use of property owned or occupied by the United States of America or any department or agency of the United States of America; or,

(2) State of Indiana. The exercise of the power of eminent domain by the State of Indiana or by any agency of the State of Indiana, or the use of property owned or occupied by the State of Indiana or any agency of the State of Indiana. (Similar provisions, see I.C. 36-7-4-1104).

Section 1.09 Interpretation of this Ordinance / Conflict with other Ordinances.

In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the health, safety, comfort, morals, convenience, and the general welfare of the public. In the case of any conflict or inconsistency between two (2) or more provisions of this Ordinance (e.g., the restrictions set forth in an overlay district versus the restrictions set forth in a primary district) or any other ordinance of the Town, the provision which imposes the greater or higher or more restrictive standard of performance shall control.

Section 1.10 Jurisdiction.

Upon both adoption of this Ordinance by the Council and the effective date of this Ordinance, the Area Plan Commission shall be the duly authorized Plan Commission for the incorporated areas of the Town pursuant to the Area Planning Law of the Indiana Code, and this Ordinance shall apply to all real property located within the corporate boundaries of the Town.

Section 1.11 Subdivision of Land.

The subdivision of land may occur in any and all districts established by this Ordinance. Whenever a subdivision occurs, the rules, regulations and procedures of the Town Subdivision Control Ordinance, or any subsequently adopted replacement Subdivision Control Ordinance for the Town shall apply.
Chapter 1
Provisions of Common Applicability

Section 1.12 Scope and Application.

Except as expressly provided otherwise in this Ordinance:

(A) No person may use or occupy any land, building, structure or improvement or authorize or permit the use or occupancy of any land, building, structure or improvement under his or her control except in accordance with the applicable provisions of this Ordinance;

(B) No land, building, structure or improvement shall be used and no building, structure or improvement 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 in the district in which such land, building, structure or improvement is located; and

(C) No building, structure or improvement shall be placed, erected, moved or structurally altered with respect to height, area, bulk, or setback except in compliance with the regulations of this Ordinance.

Section 1.13 Private Provisions.

The provisions of this Ordinance are not intended to nullify, abolish or repeal any easement, covenant or other private agreement or restriction.

Section 1.14 Determination of Land Uses Not Listed in this Ordinance.

(A) It is recognized that this Ordinance may require interpretation to assign all possible uses to individual districts. Therefore, any use which is not specifically set forth in this Ordinance shall be reviewed by the Zoning Administrator for consistency with the intent set forth in each district and for compatibility with use characteristics typical of uses permitted within those districts. Based upon this review, the Zoning Administrator shall determine the appropriate district for any use which is not specifically set forth herein.

(B) In case of disagreement with the determination of the Zoning Administrator in assigning a use to an appropriate district, any aggrieved party may file an appeal with the Board of Zoning Appeals pursuant to the provisions of Section 15.03 Board of Zoning Appeals, of this Ordinance.

(C) If it is determined by the Zoning Administrator that a particular use is not permitted in any residential, office, commercial, industrial or other district provided for in this Ordinance, and no appeal of the Zoning Administrator's decision is filed with the Board of Zoning Appeals pursuant to the provisions of Section 15.03 Board of Zoning Appeals, of this Ordinance; or it is determined upon appeal that a particular use is not permitted in any residential, office, commercial, industrial or other district provided for in this Ordinance, then such use may be deemed to require the PUD district and shall be considered to be a
permitted use only in a PUD district in which such use is specifically included and described in the PUD district Ordinance.

Section 1.15 Saving Provision for Pending Enforcement Actions.

Except as shall be expressly provided for in this Ordinance, the adoption of this Ordinance shall not:

(A) Nullify or make void any action pending under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;

(B) Discontinue, nullify, void, abate, modify or alter any penalty accruing or about to accrue under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;

(C) Affect the liability of any person, firm, or corporation under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;

(D) Waive any right of the Town under any section or provision of any prior Zoning Ordinance or Subdivision Control Ordinance; or,

(E) Vacate or annul any rights obtained by any person, firm, or corporation by lawful action of the Town under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance.

Section 1.16 Transition Rules.

(A) Pending Permit Applications (per IC 36-7-4-1109).

(1) As used in this section, the term “Zoning Approval or Permit” shall include the following: an improvement location permit; a building permit; a certificate of occupancy; approval of a site-specific development plan; approval of a primary plat or secondary plat; approval of a conditional use, special exception use; or, approval of a planned unit development.
Chapter 1
Provisions of Common Applicability

(2) For any full and complete application for a zoning approval or permit required by the prior existing Zoning Ordinance of the Town and which application is pending on the effective date of this Ordinance, the granting of said zoning approval or permit, and the granting of any secondary, additional, or related permits or approvals required from the Town with respect to the general subject matter of the application of said permit, are governed for at least three (3) years after the date of application by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the real estate when the application is filed, even if: before the issuance of the permit or while the permit approval process is pending; or, before the issuance of any secondary, additional, or related permits or approvals or while the secondary, additional, or related permit or approval process is pending, the statutes, ordinances, rules, development standards, or regulations governing the granting of the permit or approval are changed by the general assembly or the Council. However, this subsection shall not apply if the development or other activity to which the permit relates is not completed within seven (7) years after the development or activity is commenced.

(B) Zone Map Amendments.

Any application for zone map amendment which has been filed with the Council and which application is full and complete under the provisions of the prior existing Zoning Ordinance of the Town shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the prior existing Zoning Ordinance of the Town, provided, however:

(1) If the proposed use would no longer be permitted in the proposed district as a result of changes to that district resulting from the adoption of this Ordinance, such application shall be deemed amended to request the district of this Ordinance in which the proposed use is first permitted; or,

(2) If the proposed district would no longer be in existence as a result of the adoption of this Ordinance, such application shall be deemed to be amended to request the district of this Ordinance which is most comparable to the zoning classification requested in such application for zone map amendment.

(C) Special Exception Use; Variance of Development Standards

Any application before the Board of Zoning Appeals (i.e., special exception use or variance of development standards) which has been filed with the Board of Zoning Appeals, and which application is full and complete under the provisions of the prior existing Zoning Ordinance of the Town, shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the prior existing Zoning Ordinance of the Town. However:
Chapter 1
Provisions of Common Applicability

(1) If such application is no longer required by the terms of this Ordinance, such application shall be considered dismissed for lack of jurisdiction; or,

(2) If the proposed use or development requires additional approvals from the Board of Zoning Appeals pursuant to the terms and conditions of this Ordinance (and which additional approvals from the Board of Zoning Appeals were not required by the terms and conditions of the prior existing Zoning Ordinance of the Town), the application shall be deemed amended to include only those additional approvals which are minimally required and within the jurisdiction of the Board of Zoning Appeals to approve for the proposed use or site plan for the development.

Section 1.17 Amendments to this Ordinance.

In its continuing administration of the purposes set forth in Section 1.03 Purpose, above, the Council may find it reasonable and necessary to propose and adopt amendments to the text of this Ordinance or determine changes to the zone maps incorporated into this Ordinance. All such amendments shall be considered and adopted in compliance with Indiana Code 36-7-4-600 et seq., the provisions of this Ordinance, and any applicable Rules of Procedure subsequently adopted by the Area Plan Commission or the Council governing such procedures.

Section 1.18 Compliance Required for Use and Development of Real Property.

Compliance with the terms and provision of this Ordinance shall be a prerequisite for the use and development of real property within the Town. Failure to comply with the terms and provisions of this Ordinance shall be deemed to be a civil zoning violation enforceable by the Zoning Administrator, as provided for in Indiana Code 36-7-4 et seq., and Chapter 17 Enforcement, of this Ordinance.

Section 1.19 Exemptions for Transportation, Communication, and Utility Lines.

(A) Service easements, including but not limited to those providing for: roadways; railroad lines; pipelines; electric power lines, conduits or systems; telephone lines, conduits or systems; cable television lines, conduits or systems; water mains, lines valves or fire hydrants; sanitary sewer mains, lines, laterals, manhole structures or lift stations; drainage or storm sewer inlets, pipes or roof drains; and, similar and comparable utility services and facilities, shall be exempt from the provisions of this Ordinance.

(B) Bus stations, park and ride facilities, railway terminals, gas storage tanks, power stations, utility substation, water treatment plants, pumping stations, water towers, sewage treatment plants and other facilities which generate, create or process such transportation, communication, or utility services, shall not be exempt from the provisions of this ordinance, and therefore shall be subject to all use and development standards regulations of this Ordinance.
Section 1.20  Clear Sight Area Requirements.

(A) No building, structure or improvement, including landscaping, shall be erected, placed, planted or maintained so as to interfere with a clear sight area located between the heights of three (3) feet and ten (10) feet above the crown of a street, driveway or alley.

(B) A clear sight area shall be established for all streets, whether public or private, in one of the following manners:

(1) At the intersection of streets, clear sight areas are formed at each corner by the street right-of-way lines and a line connecting points on the right-of-way lines located twenty-five (25) feet away from the intersection of such street right-of-way lines. In the case of a round or corner-cut right-of-way, the measurement shall be taken from the intersection of the right-of-way lines extended; or,

(2) At the intersection of a street with a driveway or alley, clear sight areas shall be formed by the intersection of the street right-of-way line and the driveway surface edge or the right-of-way of the alley and a line connecting points ten (10) feet from the intersection of such street right-of-way line and the driveway surface edge or alley right-of-way.
Section 1.21  Number of Buildings on a Lot

In all Zoning Districts not more than one (1) principal detached single family dwelling, where permitted, shall be located on a lot.

Section 1.22  Access to Lots.

(A) Access to a lot or parcel shall be from a dedicated, improved public right-of-way. A lot or parcel without frontage along a dedicated, improved public right-of-way shall be developed under one (1) of the following:

(1) Only after obtaining a frontage variance from the Area Board of Zoning Appeals for those lots without frontage on a public street; or

(2) Through a condominium regulated by I.C. 32-25; or

(3) As part of multifamily zoning district; or

(4) As part of planned unit development.

Section 1.23  Requirements for All Private Streets and Private Alleys.

(A) All private streets and private alleys, when specifically authorized for use by the Town through grant of a variance, development incentive, plat or subdivision waiver, shall be developed to the following standards:

(1) Pavement Width for Private Streets. Minimum pavement width for that portion of a private street available for through traffic (i.e., exclusive of parking spaces):

(a) Residential Districts:
   1. 1 way traffic – 12'
   2. 2 way traffic – 24'

(b) Office, Commercial and Industrial Districts:
   1. 1 way traffic – 18'
   2. 2 way traffic – 36'

(2) Pavement Width for Private Alleys. Minimum pavement width for that portion of a private alley available for through traffic (i.e., exclusive of parking spaces):

(a) Residential Districts – 12'
(b) Commercial Districts or Industrial Districts – 16′

(B) Depth and Materials. Minimum pavement depth and materials for that portion of a private street or private alley available for through traffic as noted above, shall be as required by the Town for public streets or public alleys. Curb sections shall be as required by the Town for public streets or public alleys.

(C) Emergency Vehicles. The geometric design of private streets or private alleys shall provide for the through movement or turn-around of emergency vehicles. Turn-around design may include cul-de-sac, hammerhead or other design approved by the Town.

(D) Maintenance / Services. Prior to the issuance of an improvement location permit or obtaining secondary plat approval, the developer or subdivider shall file documentary assurances with the Town that all lots served by the private streets or private alleys shall be provided with the following services: regular trash pick-up; leaf pick-up; snow removal; daily mail delivery service; roadway maintenance and repair, including, but not limited to, driving surface, roadway subgrade, subsurface drainage, roadside drainage, curbs, sidewalks, street lights, street name signs, traffic control signs, and traffic control signals; and, powers to enforce speed control and parking regulations. Such services shall be provided in accordance with the specifications approved by the Town, which shall include the establishment of a maintenance fund or escrow account by the developer or subdivider, which may be supplemented by regular or special assessments against each lot owner provided such assessments are at reasonable and non-discriminatory rate of charge. Such documentary assurances shall be incorporated into the applicable final plat that is recorded in the Office of the Recorder of St. Joseph County, Indiana, or otherwise provided for through legally binding perpetual agreements as approved by the Town.

Section 1.24 Additional Setback Provisions

(A) In the case where the thoroughfare plan does not include a proposed right-of-way, or where the existing right-of-way is greater than the proposed right-of-way, the existing right-of-way line shall be used for setback measurement.

(B) The minimum front yard and minimum building setback from the right-of-way line of a private street shall be the same as for all other streets in the applicable district.

(C) In any block in any district contained in this Ordinance in which an existing front yard setback is established by existing, legally established nonconforming buildings or structures on more than sixty percent (60%) of the total number of lots within the same block face fronting on the same public street, the minimum front yard setback for any new building, structure or addition along such block face shall be the average of such established front yards, if such average dimension is less than the minimum front yard setback established by this Ordinance.
(D) That portion of a *double frontage lot* which abuts any perimeter *street* in which a "non-access easement" is provided for by a properly approved and recorded plat, shall be subject to *setback* and landscaping requirements of this Ordinance applicable to minimum rear *yards*.

**Section 1.25  Exemption for Anti-Terrorism Devices and Portable Towers.**

Sensors and special devices specifically designed to monitor air quality and to alert governmental authorities of biological, chemical or nuclear attack(s) shall be allowed on any *building or structure*, including *telecommunications towers*, subject to the final review of the *Zoning Administrator*. Integrated portable tower systems, which are specifically designed to monitor air quality and which may alert governmental authorities of biological, chemical or nuclear attack(s) may be permitted on an emergency basis, subject to the final review of the *Zoning Administrator* with regard to location(s) and duration.

**Section 1.26  Environmental Performance Standards.**

All *uses* in existence prior to the effective date of this Ordinance, or established after the effective date of this Ordinance in any *District*, shall comply with the performance standards of the applicable municipal, state or federal regulations pertaining to: vibration; smoke, dust and particulate matter; noxious matter; odor; noise; heat; glare; or, waste, and shall be subject to enforcement action by the applicable municipal, state or federal agency responsible for monitoring and enforcing such regulations.

**Section 1.27  Height Regulations for Roof Mounted or Roof Piercing Structures.**

The following regulations shall apply to roof mounted or roof piercing *structures* in any *district*:

(A) Parapet walls may exceed the maximum building height, provided such parapet wall does not exceed four (4) feet in height above the roof line; and,

(B) Roof mounted or roof piercing chimneys, cooling towers, elevator bulkheads, mechanical penthouses, stacks, stage towers, scenery lofts, water towers, radio or television antenna, ornamental towers, cupolas, domes, steeples and spires, may exceed the maximum building height, provided such structures do not exceed twenty-five (25) feet in height above the roof line, or to such height as is necessary to accomplish the purpose they are to serve.
Chapter 1  
Provisions of Common Applicability

Section 1.28  Wetlands.

(A) The wetlands of the Town are a valuable natural resource requiring careful management to maintain their usefulness to public health, safety and welfare. In their natural state, wetlands serve to control flooding and water pollution, buffer shorelines and stream banks against erosion and maintain supplies of potable ground water. Wetlands also provide high-quality wildlife habitat and offer opportunities for recreation, scientific study and natural resource education.

(B) It is the policy of the Town to avoid or minimize damage to wetlands, to permit reasonable economic use of wetlands in ways that are compatible with sound wetlands conservation practices; to encourage development not dependent on a water-related location to be sited in upland areas; to allow wetlands losses only when unavoidable; to promote development at adjacent upland sites that will have minimal or no adverse impact on wetlands; and to coordinate the planning and zoning process with federal and state programs designed to preserve, protect or enhance wetlands values.

(C) Applicability. This section shall apply to all lands in or within twenty-five (25) feet of a wetland located within the jurisdiction of the Town.

(D) Areas shown on the National Wetlands Inventory, published by the U.S. Fish and Wildlife Service, as being wetlands are presumed to be wetlands consistent with the definitions thereof. Wetlands not shown on the National Wetlands Inventory are presumed to exist and are hereby designated as such and are protected under all of the terms and provisions of this section.

(E) Certification of No Adverse Impact. Persons applying for subdivision or planned unit development approval, or for a building permit for any residential, office, commercial or industrial use, must certify that the proposed subdivision, planned unit development or structure or use for which a building permit is being sought, is in full compliance with all federal and state laws protecting wetlands. Any action within a wetland, such as, but not limited to, grading, dredging, draining and filling may require a permit from the Indiana Department of Natural Resources, the Indiana Department of Environmental Management or the Us. Army Corps of Engineers or other state or federal agency, as applicable. It is hereby deemed the responsibility of the applicant to obtain the necessary permits, or to obtain certification from the appropriate state and federal agencies that said permits are not applicable.

Section 1.29  Greenway Connection.

Residential developments, schools, religious uses, businesses or other uses which encourage public access, and which are located on a lot or parcel which abuts any portion of a greenway
designated on an officially adopted plan of the City of Mishawaka, Elkhart County, St. Joseph County or the Town, shall provide a direct linkage from the project to such Greenway.

**Section 1.30  Existing Buildings and Structures – Exemption from Development Standards.**

In those instances where buildings and structures exist on a lot or parcel that is subsequently rezoned to another zoning district (a/k/a zone map amendment) or is approved as a special exception use, those buildings and structures shall be exempt from seeking variances from the required side, rear, or front yard development standards of that zoning district. Existing structures shall be deemed to be legal nonconforming buildings or structures and shall comply with all provisions of Chapter 3 Nonconforming Lots, Uses, Buildings, Structures or Signs, from that point forward.
CHAPTER 2
ZONING DISTRICTS AND ZONE MAPS

Section 2.01 Establishment of Districts.

The following General Use Districts are hereby established for the corporate limits of the Town, and land within said areas shall be designated on the Official Zone Map by the following symbols:

<table>
<thead>
<tr>
<th>General Use Districts</th>
<th>Symbol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Residential</td>
<td>R1</td>
</tr>
<tr>
<td>Multi Family Residential</td>
<td>R2</td>
</tr>
<tr>
<td>Office Buffer</td>
<td>OB</td>
</tr>
<tr>
<td>Commercial</td>
<td>C</td>
</tr>
<tr>
<td>Industrial</td>
<td>I</td>
</tr>
<tr>
<td>Planned Unit Development</td>
<td>PUD</td>
</tr>
</tbody>
</table>

Section 2.02 Order of Districts.

The districts listed in Section 2.01 Establishment of Districts, above, are ranked in the order from the "least intense" district on the top, through each successively "more intense" district as the list progresses to the bottom, except for the Planned Unit Development district which shall not be considered part of such progression. PUD's shall be ranked individually based upon the permitted uses authorized in each PUD and the district in which such permitted uses would otherwise be allowed as a matter of right.

Section 2.03 Official Zone Map.

In order to carry out the purpose of this Ordinance and to allow a variety of uses in different districts which are appropriate in location, arrangement, and density to the character of the individual districts and the establishment of a well-considered pattern of development for the Town, all real property located within the corporate boundaries of the Town are hereby divided into districts as shown on the Official Zone Map which, together with all explanatory matter, is incorporated by reference and declared to be a part of this Ordinance.
Section 2.04 Identification of the Official Zone Map.

(A) An Official Zone Map for the Town shall be maintained by the Executive Director as a paper hard copy, or in electronic format.

(B) If the Official Zone Map is maintained as a paper hard copy, the Official Zone Map may be identified by the signature of the President of the Town Council and the signature of the Executive Director under the following words: "This is to certify that this is the Official Zone Map of the Town of Osceola, Indiana", together with the date of adoption of this Ordinance.

(C) If the Official Zone Map is maintained in electronic format, the Executive Director shall be the custodian of the electronic format Official Zoning Map. The Executive Director may depict the Official Zone Map, in total or in part, in various formats and scales as appropriate to the need.

Section 2.05 Official Zone Map Changes.

(A) If, after adoption of the Official Zone Map, the Town Council, in accordance with the provisions of this Ordinance and Indiana Code 36-7-4-600 et seq., changes any of the district boundaries or other matter portrayed on the Official Zone Map, such changes shall be entered by the Executive Director as follows:

(1) If hard copy, changes shall be depicted on a “working copy” of the Official Zone Map, and shall be maintained as an interim representation of the actual zoning changes approved by the Town Council since the most recent adoption of an Official Zone Map; or,

(2) If in electronic format, changes shall be entered to the electronic format Official Zone Map, which is maintained in the office of the Area Plan Commission.

(3) The “working copy” of the Official Zone Map, or, if maintained in electronic format, a hard copy depiction of the Official Zone Map, shall be available for public inspection and reference during all normal business hours. In case of discrepancy between changes noted on the “working copy” of the Official Zone Map and the official printed record of the Town Council, the official printed record of the Town Council shall control.

(B) In the event that the Official Zone Map becomes worn, damaged, destroyed, lost or difficult to interpret, staff shall on an as needed basis, prepare a revised Official Zone Map for review and recommendation by the Area Plan Commission to the Town Council at a public hearing for which proper notice has been provided. A revised Official Zone Map shall incorporate all official actions of the Town Council related to matters depicted on the
Official Zone Map since the adoption of the prior Official Zone Map. A revised Official Zone Map may also include revisions to correct drafting errors and changes in the base information related to subdivision plats or streets.

(C) The Area Plan Commission shall certify its recommendation of such revised Official Zone Map to the Town Council for official adoption by the Town Council. Any such revised Official Zone Map shall be identified as described above with the addition of the phrase "As amended to and including the Town Council agenda of ____________".

(D) No change of any nature shall be made in the Official Zone Map, or matter shown thereon, except in conformity with the amendment procedures set forth in this Ordinance.

Section 2.06 Retention and Preservation of Record.

Unless the prior Official Zone Map has been lost or completely destroyed, the prior Official Zone Map, along with all available records pertaining to its adoption or amendment, shall be retained and preserved in the office of the Area Plan Commission.

Section 2.07 Interpretation of the Official Zone Map.

Where uncertainty exists with respect to the boundaries of districts shown on the Official Zone Map, the following rules shall apply to the interpretation of those boundaries:

(A) Boundaries indicated as approximately following the center lines of thoroughfares, highways, streets or alleys shall be construed to follow the center lines.

(B) Boundaries indicated as approximately following platted lot lines shall be construed to follow the platted lot lines.

(C) Boundaries indicated as approximately following the corporate boundary of the Town shall be construed as following such corporate boundary of the Town.

(D) Boundaries indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

(E) Boundaries indicated as approximately following the along a public right-of-way which is subsequently vacated shall be construed to follow the center line of the vacated public right-of-way.

(F) Boundaries indicated as approximately following the center lines of streams, rivers, lakes or other bodies of water shall be construed as following the center lines of such bodies of water.
Chapter 2  
Zoning Districts and Zone Maps  

(G) Boundaries indicated as approximately following floodplain lines shall be construed to follow the floodplain lines. If the floodplain lines are changed, either naturally or as permitted by law, and such floodplain line changes are documented and concurred with by the Town Engineer, such boundary shall be construed as moving with such change.

(H) Boundaries indicated as following the contours of certain elevations or soils of a particular type shall be construed as following the actual height or soil contour as determined by accepted surveying practices.

(I) Boundaries indicated as parallel to or extensions of features indicated in the subsections above shall be so controlled.

(J) Distances not specifically indicated on the Official Zone Map shall be determined by the scale of the map.

(K) Where a discrepancy exists between the depictions on the Official Zone Map and the text of a legal description accompanying an ordinance for zone map change duly adopted by the Town Council, the text of the legal description shall control.

(L) Where physical or cultural features existing on the ground do not agree with those shown on the Official Zone Map, or in other circumstances not covered above, the Executive Director shall interpret the boundaries. Any party dissatisfied with the interpretation of the Executive Director may appeal such interpretation to the Board of Zoning Appeals.

Section 2.09  Zoning of Newly Annexed Land to the Town.

(A) All real property annexed into the Town after the effective date of this Ordinance shall be considered zoned to the R1 Single Family District of this Ordinance.

(B) In those instances in which the owner of real property proposed for annexation into the Town desires annexation only if the zoning of the real property is zoned to a district other than R1 Single Family, such owner may file a petition for zone map change which shall identify the real property and the requested district. Said petition shall be filed in compliance with the provisions of this Ordinance and any applicable procedures adopted by the Area Plan Commission. The Area Plan Commission shall consider the petition for zone map change and certify the petition for zone map change to the Council with a favorable recommendation, an unfavorable recommendation or no recommendation. The Town Council shall consider the request for annexation and zone map change at a combined hearing and shall determine the annexation question and zone map change under a single combined vote. The Area Plan Commission and Council shall have all powers delegated to them by Indiana Code 36-7-4-600 et seq., and this Ordinance in determining the zone map change.
(C) The Area Plan Commission shall not be obligated to recommend approval, nor shall the Council be obligated to approve a request for zone map change which, in the sole discretion of the Area Plan Commission or Council, is not consistent with the Comprehensive Plan, the purpose and intent of this Ordinance, or the requirements for the approval of a zone map change contained in this Ordinance and state law.

Section 2.10 Zoning Violations in All Districts

The following shall be considered as zoning violations in all districts:

(A) Use. The conduct of any activity in any zoning district that is not specifically enumerated as a permitted primary use or accessory use in that district, and which activity has not been legally established by a currently valid variance, special exception use or other approval grant;

(B) Development Standards. Failure to comply with district development standards, including but not limited to landscaping, paving of parking areas, minimum parking space requirements, trash dumpster enclosure, fencing or screening requirements; and

(C) Approvals. The failure to comply with the terms, provisions or conditions of: a grant of variance or special exception use; an approval of a development plan; or, other approval grant authorized by this Ordinance.
CHAPTER 3

NONCONFORMING LOTS, USES, BUILDINGS, STRUCTURES OR SIGNS

Section 3.01 Intent.

(A) Within the districts established by this Ordinance, there exist the following which were legally established prior to the effective date of the adoption, revision or amendment of this Ordinance, but which would be prohibited, regulated or restricted under the provisions of this Ordinance:

(1) Nonconforming lots of record;
(2) Nonconforming buildings or structures;
(3) Nonconforming uses of land;
(4) Nonconforming uses within nonconforming buildings or structures; and,
(5) Nonconforming signs

(B) It is the intent of this Ordinance to permit these legally established nonconforming lots of record, buildings, structures, uses and signs to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that legally established nonconforming buildings, structures, uses and signs shall not:

(1) Be enlarged upon, expanded or extended; or,
(2) Be used as grounds for adding other buildings, structures, uses or signs which are prohibited elsewhere in the same district.

(C) Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land, nonconforming uses within nonconforming buildings or structures, and nonconforming signs that are either illegal, or not legally established on the effective date of this ordinance, shall not become legally established by virtue of the enactment of this ordinance.

(D) Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land, nonconforming uses within nonconforming buildings or structures, and nonconforming signs which are in full compliance with the regulations of this ordinance pertaining to the permitted uses and development standards of the district to which the real estate is zoned shall, after the effective date of this ordinance, be considered validated as
conforming lots of record, buildings, structures, uses and signs for the purposes of interpreting and applying this ordinance.

**Section 3.02 Certificate of Legally Established Nonconforming Use of Land.**

(A) In order to protect the lawful nonconforming status of a nonconforming lot, use, building, structure or sign, a person who owns or operates said nonconforming lot, use, building, structure or sign shall request a Certificate of Legally Established Nonconforming Use of Land. The applicant, prior to the issuance of the Certificate of Legally Established Nonconforming Use of Land, shall bear the burden of proof to demonstrate that the lot, use, building, structure or sign was legally established per the requirements of this section. Submitted materials shall include, but not be limited to the following:

1. A completed application, on a form properly signed and notarized by the owner of the subject property, and which submittal shall include at a minimum: legal description of the property; a site location map; property tax identification number; Township Assessor property cards; recorded documents such as contracts, liens, or leases; business records that provide insight into the establishment or continuing use of the property; photographic evidence; Town records; and

2. Any other information deemed appropriate by the Zoning Administrator to determine the legal status of the nonconforming lot, use, building, structure or sign as a lawful nonconforming use, and for the proper administration and enforcement of this ordinance, such as but not limited to: lease and building histories, utility bills, city directory listings, historical ads, building permits, zoning and variance histories, affidavits, etc.

(B) A fee, as established by the Town.

**Section 3.03 Incompatibility of Legally Established Nonconforming Uses.**

(A) Legally established nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the district in which such legally established nonconforming use is located.

(B) A legally established nonconforming use of a building or structure, or a legally established nonconforming use of land, shall not be extended, expanded or enlarged after the effective date of this ordinance.
Section 3.04  Avoidance of Undue Hardship.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans for or construction of any building, structure or sign, or the designation of use of any building or structure, for which an improvement location permit has been properly issued prior to the effective date of this ordinance, provided that:

(A) The construction of such building, structure or sign is commenced within three (3) years of such effective date of this ordinance;

(B) Construction of such building, structure or sign is diligently prosecuted to completion; and,

(C) Construction of such building, structure or sign shall be completed within seven (7) years of the issuance of the improvement location permit.

Section 3.05  Legally Established Nonconforming Lots.

(A) Legally Established Nonconforming Lots of Record.

Any legally established lot recorded, or any legally established platted lot recorded prior to December 31, 1993, having less than the required minimum lot area or minimum lot width required by the applicable district regulations of this ordinance, shall be deemed a permitted exception to such minimum lot area or minimum lot width, and may be used for any permitted use within the applicable district in which such lot is located, provided that all other development standards are met.

(B) Legally Established Nonconforming Lot Frontage or Lot Area Resulting from Acquisition of Right-of-Way.

Any legally established lot in which the frontage of such lot or the area of such lot has been reduced below that which is required by the applicable district regulations of this ordinance by the acquisition of right-of-way or access rights by a governmental entity, shall be deemed a permitted exception to such minimum frontage requirements and may be used for any permitted use within the applicable district in which such lot is located provided that all other development standards are met.

Section 3.06  Legally Established Nonconforming Buildings or Structures (Excluding Signs).

Where a legally established nonconforming building or structure exists on the effective date of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on: gross floor area; lot coverage; building height limitations; front, side and rear setbacks and
Chapter 3  
Nonconforming Lots, Uses, Buildings, Structures or Signs

yards; location on the lot; bulk; or other provisions of this ordinance applicable to the building or structure, such building or structure may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

(A) Such legally established nonconforming building or structure may not be enlarged, expanded or altered in a way which increases its nonconformity, provided such building or structure may be altered so as to decrease the extent of nonconformity;

(B) Should such legally established nonconforming building or structure, or legally established nonconforming portion of a building or structure, be damaged or destroyed by any means to the extent that restoration will exceed fifty (50) percent of the cost of construction of the entire building or structure at the time the damage or destruction is reported, as determined pursuant to Section 3.12 Determination of Cost of Construction, below, said building or structure shall not be reconstructed except in conformity with the provisions of this ordinance; and

(C) Should such legally established building or structure be moved for any reason for any distance whatsoever, such legally established building or structure shall thereafter conform to the provisions of this ordinance.

Section 3.07 Legally Established Nonconforming Uses of Land.

Where legally established nonconforming uses of land exist on the effective date of this ordinance which would not be permitted by the provisions of this ordinance, such uses may be continued so long as they remain otherwise lawful provided that:

(A) Such legally established nonconforming uses shall not be enlarged, expanded, increased or extended to occupy a greater area of land than was occupied on the effective date of this ordinance;

(B) Such legally established nonconforming uses shall not be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses on the effective date of this ordinance; and

(C) No additional building or structure shall be erected in connection with such legally established nonconforming use of land.

Section 3.08 Discontinuation of Legally Established Nonconforming Uses of Land.

If any legally established nonconforming business, commercial, industrial or multifamily use of land is either of the following, any subsequent use of such land shall conform to the provisions of this ordinance:

(1) Abandoned for any period of time; or,
(2) Discontinued for more than twelve (12) consecutive months (except, when a probate related court order or government action impedes access to the premises).

Section 3.09 Legally Established Nonconforming Uses Within Legally Established Nonconforming Buildings or Structures.

(A) If any legally established nonconforming use is located within a legally established nonconforming building or structure, and such legally established nonconforming building or structure becomes unsafe or unlawful by reason of physical condition and is razed, the legally established nonconforming use previously being conducted in such legally established nonconforming building or structure shall be extinguished and no longer permitted.

(B) If any legally established nonconforming use is located within a legally established nonconforming building or structure and such legally established nonconforming building or structure is damaged or destroyed by any means to the extent that restoration will exceed fifty (50) percent of the cost of construction of the entire building or structure at the time the damage or destruction is reported, as determined pursuant to Section 3.12 Determination of Cost of Construction, below, the legally established nonconforming use previously being conducted in such legally established nonconforming building or structure shall be extinguished and no longer permitted.

(C) A legally established nonconforming use within a legally established nonconforming building or structure may be changed to a less intense use pursuant to sub-Section 2.02 Order of Districts (i.e., within sub-Section 4.04 Commercial District or within sub-Section 4.05 Industrial District, but not from sub-Section 4.04 Commercial District to sub-Section 4.03 Office Buffer District), provided all other regulations of this Chapter are complied with.

Section 3.10 Repairs and Maintenance of Legally Established Nonconforming Buildings or Structures (Excluding Signs).

(A) Ordinary Repairs. On any legally established nonconforming building or structure, or portion of a building or structure containing a legally established nonconforming use, work may be done on ordinary repairs or on the repair or replacement of non-bearing walls, fixtures, wiring or plumbing, provided that the cubic feet content existing when the building or structure, or portion of a building or structure containing a legally established nonconforming use became nonconforming shall not be increased. Nothing herein shall be deemed to prevent the strengthening, repairing or restoring to safe condition of any building or structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
Chapter 3
Nonconforming Lots, Uses, Buildings, Structures or Signs

(B) Reconstruction Prohibited. If a legally established nonconforming building or structure or portions of a building or structure containing a legally established nonconforming use becomes unsafe or unlawful by reason of physical condition and is razed, such building or structure shall not thereafter be rebuilt or used except in conformity with the provisions of this ordinance.

(C) Remodeling. The gross floor area and the maximum building height devoted to the legally established nonconforming use shall not be increased, except as such increase is required to comply with other applicable federal, state or local regulations (i.e., minor enlargements to accommodate ADA accessibility guidelines or current building codes).

(D) Parking Area, Outside Storage Area or Outside Operations Area.

   (1) A legally established nonconforming parking area, outside storage area or outside operations area may be maintained, repaired or upgraded by hard surfacing with asphalt or concrete provided that:

      (a) There is no increase in the total area occupied by the parking area, outside storage area or outside operations area; and,

      (b) If, in the discretion of the Zoning Administrator, the hard surfacing would serve to reduce a potential negative impact of the existing parking area, outside storage area or outside operations area on surrounding properties (e.g., reduction in fugitive dust emissions, noise, erosion, etc.).

   (2) In case of disagreement with the determination of the Zoning Administrator, any aggrieved party may file an appeal with the Board of Zoning Appeals pursuant to the provision of Section 15.03 Board of Zoning Appeals, of this ordinance. Such hard surfacing shall require an improvement location permit and shall also be subject to full review under, and compliance with, the storm drainage requirements of the Town.

Section 3.11 Legally Established Nonconforming Signs.

(A) Continued Existence. Any legally established nonconforming sign may continue to exist, including the performance of normal and routine maintenance, so long as such sign remains otherwise lawful.

(B) Repair and Maintenance. Legally established nonconforming signs may receive normal and routine repair and maintenance subject to the following provisions:

   (1) A legally established nonconforming sign may not be enlarged, expanded or altered in a way which increases its nonconformity;
Chapter 3
Nonconforming Lots, Uses, Buildings, Structures or Signs

(2) A *legally established nonconforming sign* erected pursuant to the grant of a *variance* of either a previously enacted zoning regulation or this ordinance for number of *signs*, height of *sign*, setback of *sign* or *sign* surface area may be altered so as to decrease the extent of nonconformity authorized by such grant of *variance*;

(3) Except as provided for in sub-Section 3.11 (B)(2), above, the removal of a *sign structure* or a *sign* cabinet shall be deemed definitive evidence that such *sign* requires work beyond normal and routine repair and maintenance, and such *sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this ordinance;

(4) If a *legally established nonconforming sign* is damaged or destroyed by any means to the extent that the repair or reconstruction of the *sign* exceeds fifty (50) percent of the cost of construction of the entire *sign*, determined pursuant to Section 3.12 Determination of Cost of Construction, below, said *legally established nonconforming sign* shall not be reconstructed except in conformity with the provisions of this ordinance;

(5) If the cost of normal and routine repair and maintenance of a *legally established nonconforming sign* exceeds fifty (50) percent of the cost of construction of the entire *sign*, determined pursuant to Section 3.12 Determination of Cost of Construction, below, said *legally established nonconforming sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this ordinance;

(6) Should a *legally established nonconforming sign* be moved for any reason for any distance whatsoever, such *legally established nonconforming sign* shall thereafter conform to the provisions of this ordinance; and

(C) Amortization of Off-Premise Signs (i.e., Billboards).

(1) Intent and Purpose.

*Off-Premise Signs*, due to their inherent visibility and incursion upon the landscape, represent a prominent design feature. The regulations contained in Chapter 10 Sign Regulations and this Section 3.11 Legally Established Nonconforming Signs of this ordinance, were prepared in recognition of the impact of *signs* and off-premise signs as a prominent urban design feature. The intent of the regulations of this sub-Section is, in part: to create a more attractive economic and business climate; to minimize the possible adverse effects of off-premise *signs* on nearby public and private property; to foster, improve and protect the physical appearance of the community; and, to promote the public health, safety and general welfare of the community.
Chapter 3
Nonconforming Lots, Uses, Buildings, Structures or Signs

(2) Impact of Off-Premise Signs. It is hereby declared by the Town Council that off-premise signs have the greatest potential of all signs to have a significant negative impact on the urban design features of the Town and the public health, safety and general welfare of the community due to: sign surface area in relation to lot area; sign surface area in relation to size of buildings; sign surface area in relation to the sign surface area permitted for on-premise business signs; sign surface area in relation to the sign surface area of traffic control signs; inherent needs for high visibility; and, predominantly being located along highly traveled thoroughfares.

(3) Declaration of Nonconforming Off-Premise Signs. By operation of law, any off-premise sign which is in existence on the effective date of this ordinance and which does not comply with the provisions of Chapter 10 Sign Regulations of this ordinance are either nonconforming off-premise signs or legally established nonconforming off-premise signs.

(4) Declaration of Legally established Off-Premise Signs. A nonconforming off-premise sign shall be deemed to be a legally established nonconforming off-premise sign relative to both use and development standards if the following conditions apply:

(a) The off-premise sign was erected in compliance with regulations applicable on the date of erection;

(b) If a permit was required at the time of erection of the off-premise sign, said permit was issued in full compliance with all applicable regulations of the Town Zoning ordinance in effect at the time of issuance of such permit, and the off-premise sign was constructed, completed and maintained in full compliance with all applicable regulations of the Town Zoning Ordinance in effect at the time of issuance of such permit;

(c) The off-premise sign existed prior to the date of adoption of this Zoning Ordinance;

(d) The off-premise sign has continued to exist from the date of adoption of this Zoning Ordinance to the present; and

(e) The off-premise sign has not been abandoned;
Chapter 3
Nonconforming Lots, Uses, Buildings, Structures or Signs

(5) Removal of *Legally established Nonconforming* Off-Premise Signs.

(a) Any off-premise *sign* which becomes a *legally established nonconforming* off-premise *sign* by virtue of: any future amendment of this ordinance; any future zone map amendment; or, any annexation of lands into the corporate jurisdiction of the *Town*, which either is not brought into compliance with the terms and conditions of Section 10 Sign Regulations of this ordinance (as such regulations may be amended from time to time), or does not obtain the variance(s) necessary to establish such *sign* as a permitted *sign* under this ordinance, shall be removed within five (5) years of the such amendment or annexation.

(b) Removal shall include the removal of the *sign* surface and any *sign structure* (including any *sign* cabinet, pole, base, foundation, support, tie rods, upright, bracing or framework) which supports or is capable of supporting such *sign* surface.

(6) *Maintenance of Legally established Nonconforming Off-Premise Signs.* *Legally established nonconforming* off-premise *signs* shall be subject to the provisions of Section 3.11 (B) above, regarding maintenance.

Section 3.12 Determination of Cost of Construction.

In determining the reported cost of construction of a *building* or *structure* or the cost of construction of a *sign*, the *Zoning Administrator* may consider the following items:

(A) *Building* or *Structure*. Documentation prepared by and provided by the applicable insurance company responsible for adjusting the loss;

(B) *Sign*. Documentation prepared by and provided by an appraiser licensed by the State of Indiana to appraise the type of property involved; or,

(C) Other documentary evidence relevant to reported cost of construction deemed appropriate by the *Zoning Administrator*.

Section 3.13 Reconstruction, Remodeling or Enlargement of a Legally Established Nonconforming Single Family Dwelling or Two Family Dwelling.

(A) Notwithstanding any provision of this Section 3.13 to the contrary, any *legally established nonconforming* single family dwelling may be either:
Chapter 3
Nonconforming Lots, Uses, Buildings, Structures or Signs

(1) Reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or

(2) Remodeled or enlarged,

provided that such remodeling or additions comply with the development standards of the applicable R1, R2, OB and C Districts related to maximum lot coverage, minimum yards and building setbacks, maximum building height, and off-street parking.

(B) Notwithstanding any provision of this Section 3.13 to the contrary, any legally established nonconforming two family dwelling may be either:

(1) reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or

(2) remodeled or enlarged,

provided that such remodeling or additions comply with the development standards of the applicable R2, OB and C Districts related to maximum lot coverage, minimum yards and building setbacks, maximum building height, and off-street parking.

Section 3.14 Additions Along a Legally Established Nonconforming Setback.

The minimum front, side or rear yard for any legally established nonconforming building having a setback which is less than that which is required by this ordinance, shall be allowed to expand one (1) or more times along the legally established nonconforming setback.
CHAPTER 4

ZONING DISTRICTS

Section 4.01  R1 Single Family District.

(A)  Intent. The R1 Single Family District is established to protect, promote and maintain the development of single family dwellings, as well as provide for limited public and institutional uses that are compatible with a residential neighborhood.

(B)  Permitted Uses. See TABLE 4.06 Table of Official Uses

(C)  Special Exception Uses. See TABLE 4.06 Table of Official Uses

(D)  Accessory Uses. See Section 5.01 Accessory Uses, Buildings and Structures.

(E)  Temporary Uses. See Section 5.02 Temporary Uses, Buildings and Structures.

(F)  Home Occupation. See Section 5.01 (E)(6) Home Occupations.

(G)  Landscaping. See Chapter 8 Landscape Regulations.

(H)  Lighting. See Chapter 9 Lighting Regulations.

(I)  Signs. See Chapter 10 Sign Regulations.

(J)  Parking and Loading. See Chapter 11 Off-Parking and Loading Regulations.

(K)  Development Standards. See TABLE 4.01 Development Standards.
TABLE 4.01 – Development Standards
R1 Single Family District

<table>
<thead>
<tr>
<th>Minimum Lot Size:</th>
<th>Single Family &amp; Two-Family</th>
<th>All Other Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Water &amp; Sewer</td>
<td>7,200 sq. ft.</td>
<td>No Minimum</td>
</tr>
<tr>
<td>Municipal Sewer Only</td>
<td>9,000 sq. ft.</td>
<td>No Minimum</td>
</tr>
<tr>
<td>Municipal Water Only</td>
<td>21,780 sq. ft.</td>
<td>21,780 sq. ft.</td>
</tr>
<tr>
<td>Private Well &amp; Septic</td>
<td>21,780 sq. ft.</td>
<td>21,780 sq. ft.</td>
</tr>
</tbody>
</table>

Minimum lot sizes may be increased subject to additional requirements by the Indiana State Board of Health or the County Health Officer, whichever is greater.

Minimum Lot Width:

<table>
<thead>
<tr>
<th>Minimum Lot Size:</th>
<th>Single Family &amp; Two-Family</th>
<th>All Other Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Water &amp; Sewer</td>
<td>60'</td>
<td>100'</td>
</tr>
<tr>
<td>Municipal Sewer Only</td>
<td>60'</td>
<td>100'</td>
</tr>
<tr>
<td>Municipal Water Only</td>
<td>100'</td>
<td>100'</td>
</tr>
<tr>
<td>Private Well &amp; Septic</td>
<td>100'</td>
<td>100'</td>
</tr>
</tbody>
</table>

Minimum Building Setback: See sub-Section 5.01 (D) (3) for River Lot exemptions.

See sub-Section 1.24 for averaging Front setbacks along a block face.

<table>
<thead>
<tr>
<th>Minimum Building Setback:</th>
<th>Single Family &amp; Two-Family</th>
<th>All Other Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front</td>
<td>20'</td>
<td>30'</td>
</tr>
<tr>
<td>Side</td>
<td>5'</td>
<td>30'</td>
</tr>
<tr>
<td>Rear</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipal Water &amp; Sewer</td>
<td>20’</td>
<td>20’</td>
</tr>
<tr>
<td>Municipal Sewer Only</td>
<td>20’</td>
<td>20’</td>
</tr>
<tr>
<td>Municipal Water Only</td>
<td>40’</td>
<td>40’</td>
</tr>
<tr>
<td>Private Well &amp; Septic</td>
<td>40’</td>
<td>40’</td>
</tr>
</tbody>
</table>

Maximum Gross Floor Area

| Maximum Gross Floor Area | N/A | N/A |

Maximum Height - Primary Structure

| Maximum Height - Primary Structure | 30’ | 40’ |

Maximum Height - Accessory Structures

| Maximum Height - Accessory Structures | 19’ | 19’ |

Minimum Parking Setbacks:

<table>
<thead>
<tr>
<th>Minimum Parking Setbacks:</th>
<th>Single Family &amp; Two-Family</th>
<th>All Other Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front</td>
<td>N/A</td>
<td>20’</td>
</tr>
<tr>
<td>Side</td>
<td>N/A</td>
<td>10’</td>
</tr>
<tr>
<td>Rear</td>
<td>N/A</td>
<td>5’</td>
</tr>
</tbody>
</table>

Maximum Lot Coverage

| Maximum Lot Coverage | 40% | N/A |

Minimum Open Space

| Minimum Open Space | N/A | 30% |
(L) Use of *Minimum Setbacks*.

All *minimum setbacks* shall be landscaped in compliance with the requirements for perimeter *yard* landscaping as set forth in Chapter 8 Landscape Regulations, and shall remain free from *structures* except where expressly permitted below:

(1) Front *minimum setback* may include *driveways* or *signs* as regulated by Chapter 10 Sign Regulations of this Ordinance, and shall otherwise be maintained as *open space* free from *buildings* or *structures*.

(2) *Side* and *rear minimum setbacks* may include *driveways*; interior access *driveways*; *walkways* or other pedestrian way connections to adjoining *lots*, provided that the remainder of said *side* and *rear yards* shall be maintained as *open space* free from *buildings* or *structures*. 


Chapter 4
Zoning Districts

Section 4.02 R2 Multi Family Residential District.

(A) Intent. The R2 Multi Family District is established to protect, promote and maintain the development of single family dwellings and multi-unit dwellings, as well as to provide for limited public and institutional uses that are compatible within a residential neighborhood setting.

(B) Permitted Uses. See TABLE 4.06 Table of Official Uses.

(C) Special Exception Uses. See TABLE 4.06 Table of Official Uses.

(D) Accessory Uses. See Section 5.01 Accessory Uses, Buildings and Structures.

(E) Temporary Uses. See Section 5.02 Temporary Uses, Buildings and Structures.

(F) Home Occupations. See Section 5.01 (E) (6) Home Occupations.

(G) Landscaping. See Chapter 8 Landscape Regulations.

(H) Lighting. See Chapter 9 Lighting Regulations.

(I) Signs. See Chapter 10 Sign Regulations.

(J) Parking and Loading. See Chapter 11 Off-Parking and Loading Regulations.

(K) Development Standards. See TABLE 4.02 Development Standards.
TABLE 4.02 – Development Standards
R2 Multi Family District

<table>
<thead>
<tr>
<th></th>
<th>Single Family &amp; Two-Family</th>
<th>Multi-Family Residential</th>
<th>All Other Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Lot Size:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipal Water &amp; Sewer</td>
<td>7,200 sq. ft.</td>
<td>No Minimum</td>
<td>No Minimum</td>
</tr>
<tr>
<td>Municipal Sewer Only</td>
<td>9,000 sq. ft.</td>
<td>1 Acre</td>
<td>No Minimum</td>
</tr>
<tr>
<td>Municipal Water Only</td>
<td>21,780 sq. ft.</td>
<td>2 Acres</td>
<td>21,780 sq. ft.</td>
</tr>
<tr>
<td>Private Well &amp; Septic</td>
<td>21,780 sq. ft.</td>
<td>3 Acres</td>
<td>21,780 sq. ft.</td>
</tr>
</tbody>
</table>

*Minimum lot sizes may be increased subject to additional requirements by the Indiana State Board of Health or the County Health Officer, whichever is greater.*

<table>
<thead>
<tr>
<th><strong>Minimum Lot Width:</strong></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Water &amp; Sewer</td>
<td>60’</td>
<td>60’</td>
<td>100’</td>
</tr>
<tr>
<td>Municipal Sewer Only</td>
<td>60’</td>
<td>60’</td>
<td>100’</td>
</tr>
<tr>
<td>Municipal Water Only</td>
<td>100’</td>
<td>75’</td>
<td>100’</td>
</tr>
<tr>
<td>Private Well &amp; Septic</td>
<td>100’</td>
<td>100’</td>
<td>100’</td>
</tr>
</tbody>
</table>

**Minimum Building Setback:**

*See sub-Section 1.24 for averaging Front setbacks along a block face.*

*See sub-Section 5.01 (D)(3) for River Lot exemptions for Accessory Structures*

<table>
<thead>
<tr>
<th></th>
<th>Front</th>
<th>Side</th>
<th>Rear</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Water &amp; Sewer</td>
<td>20’</td>
<td>5’</td>
<td>20’</td>
</tr>
<tr>
<td>Municipal Sewer Only</td>
<td>20’</td>
<td>15’</td>
<td>20’</td>
</tr>
<tr>
<td>Municipal Water Only</td>
<td>40’</td>
<td>30’</td>
<td>40’</td>
</tr>
<tr>
<td>Private Well &amp; Septic</td>
<td>40’</td>
<td>40’</td>
<td>40’</td>
</tr>
</tbody>
</table>

**Maximum Gross Floor Area**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
<th>N/A</th>
<th>N/A</th>
</tr>
</thead>
</table>

**Maximum Height – Primary Structure**

<table>
<thead>
<tr>
<th></th>
<th>30’</th>
<th>40’</th>
<th>40’</th>
</tr>
</thead>
</table>

**Maximum Height – Accessory Structures**

<table>
<thead>
<tr>
<th></th>
<th>19’</th>
<th>25’</th>
<th>25’</th>
</tr>
</thead>
</table>

**Minimum Parking Setbacks:**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
<th>20’</th>
<th>20’</th>
</tr>
</thead>
</table>

**Maximum Lot Coverage**

<table>
<thead>
<tr>
<th></th>
<th>40%</th>
<th>40%</th>
<th>40%</th>
</tr>
</thead>
</table>

**Minimum Open Space**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
<th>30%</th>
<th>30%</th>
</tr>
</thead>
</table>
(L) Use of Minimum Setbacks.

All *minimum setbacks* shall be landscaped in compliance with the requirements for *perimeter yard* landscaping as set forth in Chapter 8 Landscaping Regulations, and shall remain free from *structures* except where expressly permitted below:

(1) *Front minimum setback* may include *driveways* or *signs* as regulated by Chapter 10 Sign Regulations of this Ordinance, and shall otherwise be maintained as *open space* free from *buildings* or *structures*.

(2) *Side and rear minimum setbacks* may include *driveways*; *interior access driveways*; *walkways* or other *pedestrian way connections* to adjoining *lots*, provided that the remainder of said *side* and *rear yards* shall be maintained as *open space* free from *buildings* or *structures*.

(M) Additional *Development Standards*.

(1) Minimum *Interior Yards*:

In projects containing two or more *buildings, interior yards* shall be provided as follows:

(A) Around *buildings* containing dwelling units, the greater of:

1. Ten (10) feet; or
2. Five (5) feet plus one (1) additional foot for each ten (10) feet of aggregate length of any wall of a *building*.

(B) Around *accessory buildings, structures or uses*: five (5) feet.

(C) *Interior yards* shall be measured perpendicular to the *building* or *structure* at all points.

(D) The distance between *buildings* or *structures* shall be the sum of each applicable minimum *interior yard*.

(E) *Interior yards* may overlap any required *perimeter yards*. 
(2) Use of Interior Yards.

(A) Around buildings containing dwelling units, required interior yards may be used for:

1. individual interior access drives leading to attached garages serving individual dwelling units, provided, however, that a minimum four (4) foot wide by eighteen (18) foot deep landscape strip shall be provided between such interior access drives;

2. open space;

3. foundation landscaping;

4. walkways; or,

5. open balconies, uncovered porches and patios which do not project into the required interior yard by more than fifty percent (50%) of the depth of such required interior yard.
(B) Around accessory buildings or uses, required interior yards may be used for: open space; foundation landscaping; walkways; or, interior access drives leading to parking spaces or overhead garage doors.

(3) Requirements for all Private Streets, Interior Access Driveways and Interior Access Drives for Multifamily Dwelling Projects.

Individual buildings and dwelling units located within a multifamily dwelling project may be served by private streets, interior access driveways and interior access drives developed in compliance with the standards set forth in Section 1.23 Requirements for All Private Streets and Private Alleys, of this Ordinance.

Section 4.03 OB Office Buffer District.

(A) Intent. The OB Office Buffer District is established to serve as a buffer between residential districts and the more intense commercial and industrial districts by permitting the development of small scale professional, business, governmental and quasi-governmental office uses, while continuing to allow residential uses. The OB District serves as a gradual and reasonable transition between major thoroughfares and residential districts. Uses in the OB District are typically less commercial in appearance, and are architecturally more harmonious with residential structures. The OB District development standards are established to assure appropriate landscaping and buffering elements are implemented to protect the residential district.

(B) Permitted Uses. See TABLE 4.06 Table of Official Uses.

   (1) An existing building located on property rezoned to OB Office Buffer may be used through its entirety, provided however, that if the building contains less than 3,000 square feet, the building may not be expanded beyond 3,000 square feet.

   (2) An existing building located on property rezoned to OB Office Buffer may be larger than 3,000 square feet. However, such building may not be further enlarged or expanded to exceed 3,000 square feet.

   (3) Any new building to be constructed is limited to a maximum of 3,000 square feet, including space within the primary building used for an accessory use or off-street parking or loading. New buildings larger than 3,000 square feet are not a permitted use in the OB Office Buffer District. For the purpose of this section, that portion of a basement used solely for storage, parking of vehicles, or maintenance of mechanical equipment shall be not included in calculating the square footage of the building.
(C) Special Exception Uses. See TABLE 4.06 Table of Official Uses.

(D) Accessory Uses. Section 5.01 Accessory Uses, Buildings and Structures.

(E) Temporary Uses. Section 5.02 Temporary Uses, Buildings and Structures.

(F) Home Occupations. Section 5.01 (E)(6) Home Occupations.

(G) Landscaping. Chapter 8 Landscape Regulations.

(H) Lighting. Chapter 9 Lighting Regulations.

(I) Signs. Chapter 10 Sign Regulations.


(K) Development Standards. See TABLE 4.03 Development Standards.
### TABLE 4.03 – Development Standards

#### OB Office Buffer District

<table>
<thead>
<tr>
<th>Minimum Lot Size:</th>
<th>Single Family &amp; Two-Family</th>
<th>All Other Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Water &amp; Sewer</td>
<td>7,200 sq.ft.</td>
<td>No Minimum</td>
</tr>
<tr>
<td>Municipal Sewer Only</td>
<td>9,000 sq.ft.</td>
<td>No Minimum</td>
</tr>
<tr>
<td>Municipal Water Only</td>
<td>21,780 sq.ft.</td>
<td>21,780 sq.ft.</td>
</tr>
<tr>
<td>Private Well &amp; Septic</td>
<td>21,780 sq.ft.</td>
<td>21,780 sq.ft.</td>
</tr>
</tbody>
</table>

Minimum lot sizes may be increased subject to additional requirements by the Indiana State Board of Health or the County Health Officer, whichever is greater.

#### Minimum Lot Width:

<table>
<thead>
<tr>
<th>Minimum Lot Width:</th>
<th>Municipal Water &amp; Sewer</th>
<th>Municipal Sewer Only</th>
<th>Municipal Water Only</th>
<th>Private Well &amp; Septic</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>60’</td>
<td>60’</td>
<td>100’</td>
<td>100’</td>
</tr>
</tbody>
</table>

#### Minimum Building Setback:

See sub-Section 1.24 for averaging Front setbacks along a block face

<table>
<thead>
<tr>
<th>Minimum Building Setback:</th>
<th>Front</th>
<th>Side</th>
<th>Rear</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>20’</td>
<td>5’</td>
<td>20’</td>
</tr>
</tbody>
</table>

#### Maximum Gross Floor Area

<table>
<thead>
<tr>
<th>Maximum Gross Floor Area</th>
<th>N/A</th>
<th>5,000 sq. ft.</th>
</tr>
</thead>
</table>

#### Maximum Height – Primary Structure

<table>
<thead>
<tr>
<th>Maximum Height – Primary Structure</th>
<th>30’</th>
<th>40’</th>
</tr>
</thead>
</table>

#### Maximum Height – Accessory Structures

<table>
<thead>
<tr>
<th>Maximum Height – Accessory Structures</th>
<th>19’</th>
<th>19’</th>
</tr>
</thead>
</table>

#### Minimum Parking Setbacks:

<table>
<thead>
<tr>
<th>Minimum Parking Setbacks:</th>
<th>Front</th>
<th>Side</th>
<th>Side, adjacent to residential districts</th>
<th>Rear</th>
<th>Rear, adjacent to residential districts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

#### Maximum Lot Coverage

<table>
<thead>
<tr>
<th>Maximum Lot Coverage</th>
<th>40%</th>
<th>40%</th>
</tr>
</thead>
</table>

#### Minimum Open Space

<table>
<thead>
<tr>
<th>Minimum Open Space</th>
<th>N/A</th>
<th>N/A</th>
</tr>
</thead>
</table>
Chapter 4
Zoning Districts

(L) Use of Minimum Setbacks.

All minimum setbacks shall be landscaped in compliance with the requirements for perimeter yard landscaping as set forth in Chapter 8 Landscape Regulations, and shall remain free from structures except where expressly permitted below:

(1) Front minimum setback may include driveways or signs as regulated by Chapter 10 Sign Regulations of this Ordinance, and shall otherwise be maintained as open space free from buildings or structures.

(2) Minimum side yards and minimum rear yards may include driveways; interior access driveways; walkways or other pedestrian way connections to adjoining lots, provided that the remainder of said side and rear yards shall be maintained as open space free from buildings or structures.

(M) Architecture.

(1) Exemption for Residential Dwellings.

All structures used solely for residential dwellings shall be exempt from the provisions of this subsection.

(2) Additions to Existing Buildings.

All additions to existing buildings shall utilize building materials that are compatible and harmonious with the materials used on the existing building.

(3) Exterior Renovations to Existing Buildings and Accessory Buildings.

Exterior renovations to existing buildings or facilities and accessory buildings are encouraged to comply with the provisions in sub-Section (N)(4), below, for new construction, however, the minimum requirement shall be the same as in sub-Section (N)(2), above, for additions to existing buildings.

(4) New Construction.

In order to create variation and interest in the built environment, all new primary buildings shall comply with either sub-section (N)(4)(a) or (b), below, regarding building material and architectural features on each facade visible from a public street:
(a) All brick (excluding window, display window, door, roofing, fascia and soffit materials), provided that the brick used on each applicable facade shall include:

1. at least two (2) architectural elements (e.g., quoins, pilasters, soldier courses, lintels, friezes, cornices, dentils, architraves, etc.); or,

2. at least two (2) colors of brick, with the secondary color constituting a minimum of ten (10) percent of the facade (excluding windows, display windows, doors, roofing, fascia or soffit materials); or,

(b) Two (2) or more building materials (excluding window, display window, door and roofing materials), provided:

1. Primary Building Material. The primary building material shall be either: brick; stone (limestone, granite, fieldstone, etc.); architectural pre-cast concrete, if the surface looks like brick or stone; or, exterior insulation and finish system (E.I.F.S.) or equivalent, and shall constitute a minimum of fifty (50) percent of each applicable facade.

2. Secondary Building Material. The secondary building material shall constitute a minimum of ten (10) percent of the facade. Glass curtain wall or a faux window (not intended for use as a window or display window) may qualify as a secondary building material.

3. Architectural Features. In addition, the exterior building material selection shall be supplemented with the use of multiple colors, textures (e.g., rough, smooth, striated, etc.) or architectural elements (e.g., quoins, pilasters, soldier courses, lintels, friezes, cornices, dentils, architraves, etc.) on each facade visible from a public street.
Section 4.04  C Commercial District

(A) Intent. The C Commercial District is intended to provide for a full range of office and retail businesses and uses, including outdoor uses and activities such as merchandise displays, sales and storage, outdoor seating, customer drive-up windows. This district also permits residential uses to encourage and support a mix of uses in support of place-making principles for a strong Town.

(B) Permitted Uses. See TABLE 4.06 Table of Official Uses.

(C) Special Exception Uses. See TABLE 4.06 Table of Official Uses.

(D) Accessory Uses – See Section 5.01 Accessory Uses, Buildings and Structures.

(E) Temporary Uses – See Section 5.02 Temporary Uses, Buildings and Structures.

(F) Landscaping. See Chapter 8 Landscape Regulations.

(G) Lighting. Chapter 9 Lighting Regulations.

(H) Signs. Chapter 10 Sign Regulations.

(I) Parking and Loading. Chapter 11 Off-Parking and Loading Regulations.

(J) Development Standards. See TABLE 4.04 Development Standards.
### TABLE 4.04 - Development Standards
**C Commercial District**

<table>
<thead>
<tr>
<th></th>
<th>Permitted Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Lot Size:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>Minimum lot sizes</td>
<td></td>
</tr>
<tr>
<td>are subject to additional requirements by the Indiana State Board of Health or the County Health Officer, whichever is greater.</td>
<td></td>
</tr>
<tr>
<td><strong>Minimum Lot Width</strong></td>
<td>35’</td>
</tr>
<tr>
<td><strong>Minimum Building Setback:</strong></td>
<td></td>
</tr>
<tr>
<td><em>See sub-Section 1.24 for averaging Front setbacks along a block face</em></td>
<td></td>
</tr>
<tr>
<td>Front</td>
<td>20’</td>
</tr>
<tr>
<td>Side</td>
<td>5’</td>
</tr>
<tr>
<td>Side, adjacent to residential use</td>
<td>10’</td>
</tr>
<tr>
<td>Rear</td>
<td>20’</td>
</tr>
<tr>
<td><strong>Maximum Building Height</strong></td>
<td>60’</td>
</tr>
<tr>
<td><strong>Minimum Parking Setbacks:</strong></td>
<td></td>
</tr>
<tr>
<td>Front</td>
<td>15’</td>
</tr>
<tr>
<td>Side</td>
<td>5’</td>
</tr>
<tr>
<td>Side and Rear adjacent to residential use</td>
<td>10’</td>
</tr>
<tr>
<td><strong>Maximum Lot Coverage</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Minimum Open Space</strong></td>
<td>N/A</td>
</tr>
</tbody>
</table>
(K) Use of Minimum Yards.

The following uses may be located between the minimum building setback line and the front lot line:

(1) Temporary and Accessory Uses and Structures as regulated by Chapter 5 Accessory Uses, Buildings and Structures;

(2) Driveways and sidewalks connecting to adjoining out lots or developments;

(3) Signs as regulated by Chapter 10 Sign Regulations of this Ordinance; and

(4) Landscaping as regulated by Chapter 8 Landscape Regulations of this Ordinance.

(L) Architecture:

(1) Exemption for Residential Dwellings.

All structures used solely for residential dwellings shall be exempt from the provisions of this subsection.

(2) Additions to Existing Buildings.

All additions to existing buildings shall utilize building materials that are compatible and harmonious with the materials used on the existing building.

(3) Exterior Renovations to Existing Buildings and Accessory Buildings.

Exterior renovations, to existing buildings or facilities and accessory buildings are encouraged to comply with the provisions in sub-Section (L)(4), below, for new construction, however, the minimum requirement shall be the same as in sub-Section (L)(2), above, for additions to existing buildings.

(4) New Construction.

In order to create variation and interest in the built environment, all new primary buildings shall comply with either sub-section (a) or (b), below, regarding building material and architectural features on each facade visible from a public street:

(a) All brick (excluding window, display window, door, roofing, fascia and soffit materials), provided that the brick used on each applicable facade shall include:
1. at least two (2) architectural elements (e.g., quoins, pilasters, soldier courses, lintels, friezes, cornices, dentils, architraves, etc.); or,

2. at least two (2) colors of brick, with the secondary color constituting a minimum of ten (10) percent of the façade (excluding windows, display windows, doors, roofing, fascia or soffit materials); or,

(b) Two (2) or more building materials (excluding window, display window, door and roofing materials), provided:

1. Primary Building Material: The primary building material shall be either: brick; stone (limestone, granite, fieldstone, etc.); architectural pre-cast concrete, if the surface looks like brick or stone; or, exterior insulation and finish system (E.I.F.S.) or equivalent, and shall constitute a minimum of fifty (50) percent of each applicable façade.

2. Secondary Building Material: The secondary building material shall constitute a minimum of ten (10) percent of the façade. Glass curtain wall or a faux window (not intended for use as a window or display window) may qualify as a secondary building material.

3. Architectural Features: In addition, the exterior building material selection shall be supplemented with the use of multiple colors, textures (e.g., rough, smooth, striated, etc.) or architectural elements (e.g., quoins, pilasters, soldier courses, lintels, friezes, cornices, dentils, architraves, etc.) on each façade visible from a public street.
Chapter 4
Zoning Districts

Section 4.05 I Industrial District

(A) Intent. The I Industrial District is established to provide for development of office/warehouse/distribution, wholesale, assembly and manufacturing or processing facilities which transform previously manufactured or blended materials or substances into new products or into a useable form. Permitted uses in this district tend to generate heavy traffic, require extensive community facilities, require outdoor storage, and generate varying amounts of hazardous or objectionable elements such as noise, odor, dust, smoke or glare.

(B) Permitted Uses. See TABLE 4.06 Table of Official Uses.

(C) Special Exception Uses. See TABLE 4.06 Table of Official Uses.

In addition to those Special Exception Uses listed in TABLE 4.06 Table of Official Uses, assembly and manufacturing uses that have operations, and/or machinery and equipment that:

(a) Are not completely enclosed within a building, such as but not limited to: foundries; junk yards; mining of sand, gravel, topsoil or other aggregate; storage of heavy equipment as a primary use; vehicle storage; or

(b) Require the blending of materials such as lubricating oils, plastics, resins and powders, such as but limited to: asphalt/concrete mixing, explosives and fireworks manufacture, fertilizers and paints,

shall require a Special Exception Use.

(D) Accessory Uses. See Section 5.01 Accessory Uses, Buildings and Structures.

(E) Temporary Uses. See Section 5.02 Temporary Uses, Buildings and Structures.

(F) Landscaping. See Chapter 8 Landscape Regulations.

(G) Lighting. See Chapter 9 Lighting Regulations.

(H) Signs. See Chapter 10 Sign Regulations.

(I) Parking and Loading. See Chapter 11 Off-Street Parking and Loading Regulations.

(J) Development Standards. See TABLE 4.05 Development Standards.
TABLE 4.05 - Development Standards
I Industrial District

<table>
<thead>
<tr>
<th>Permitted Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Size: N/A</td>
</tr>
</tbody>
</table>

*Minimum lot sizes are subject to additional requirements by the Indiana State Board of Health or the County Health Officer, whichever is greater.*

<table>
<thead>
<tr>
<th>Minimum Lot Width: 35’</th>
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</thead>
</table>

**Minimum Building Setback:**

*See Section 1.24 for averaging Front setbacks along a block face.*

<table>
<thead>
<tr>
<th>Front</th>
<th>50’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side</td>
<td>5’</td>
</tr>
<tr>
<td>Side, adjacent to residential districts</td>
<td>50’</td>
</tr>
<tr>
<td>Rear</td>
<td>20’</td>
</tr>
<tr>
<td>Rear, adjacent to residential</td>
<td>50’</td>
</tr>
</tbody>
</table>

**Maximum Building Height:** 60’

<table>
<thead>
<tr>
<th>Minimum Parking Setbacks:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Front</th>
<th>15’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side</td>
<td>5’</td>
</tr>
<tr>
<td>Side, adjacent to residential districts</td>
<td>10’</td>
</tr>
</tbody>
</table>

**Maximum Lot Coverage** N/A

**Minimum Open Space** N/A

(K) Use of Minimum Yards.
Chapter 4
Zoning Districts

The following uses may be located between the minimum building setback line and the front lot line:

1. Auto sales area, parking lot and gasoline sales area, provided that no portion of such areas may be located closer to the front lot line than fifteen (15) feet.

2. Driveways and sidewalks connecting to adjoining out lots or developments.

3. Signs as regulated by Chapter 10 Sign Regulations of this Ordinance.

4. Landscaping as regulated by Chapter 8 Landscape Regulations of this Ordinance.

Section 4.06 Reserved

Section 4.07 Reserved

Section 4.08 Table of Official Uses.

<table>
<thead>
<tr>
<th>Table 4.06</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TABLE OF OFFICIAL USES</strong></td>
</tr>
<tr>
<td>P = Permitted Use  SEU = Special Exception Use</td>
</tr>
<tr>
<td>USE</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Accessory Living Quarters</td>
</tr>
<tr>
<td>Adult Business (See sub-Section 12.01)</td>
</tr>
<tr>
<td>Assisted Living Facility</td>
</tr>
<tr>
<td>Athletic Fields and Stadiums</td>
</tr>
<tr>
<td>Automotive Uses</td>
</tr>
<tr>
<td>Banquet Halls</td>
</tr>
<tr>
<td>Bank</td>
</tr>
<tr>
<td>Bar; tavern</td>
</tr>
</tbody>
</table>
### Chapter 4
Zoning Districts

**TABLE 4.06**
Table of Official Uses

<table>
<thead>
<tr>
<th>USE</th>
<th>R1</th>
<th>R2</th>
<th>OB</th>
<th>C</th>
<th>I</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bed and Breakfast</strong></td>
<td>SEU</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Campground</td>
<td>SEU</td>
<td></td>
<td>SEU</td>
<td>SEU</td>
<td></td>
</tr>
<tr>
<td><em>Casinos, Gambling &amp; off-track, pari-mutual wagering Facilities</em> (See sub-Section 12.01)</td>
<td></td>
<td></td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Catering Service</td>
<td></td>
<td>SEU</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Cemetery</td>
<td>SEU</td>
<td>SEU</td>
<td>SEU</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td><em>Child Care Center</em></td>
<td>SEU</td>
<td>SEU</td>
<td>SEU</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td><em>Child Care Home (that is used as the primary residence of the person who operates the child care home)</em></td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Child Care Home</td>
<td>SEU</td>
<td>SEU</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Child Care Institution</td>
<td>SEU</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Child Care Ministry</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Club, Lodge and Union Halls</td>
<td>SEU</td>
<td></td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Crematory</td>
<td>SEU</td>
<td></td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Community Center</td>
<td>SEU</td>
<td></td>
<td>P</td>
<td>P</td>
<td></td>
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<tr>
<td>Contractor Equipment Yards</td>
<td></td>
<td></td>
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<tr>
<td><em>Dwelling, Single Family</em></td>
<td>P</td>
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</tr>
<tr>
<td><em>Dwelling, Two Family</em></td>
<td>SEU</td>
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<tr>
<td><em>Dwelling, Multi Family</em></td>
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<tr>
<td>Fire; Police</td>
<td>SEU</td>
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<td>SEU</td>
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<tr>
<td><em>Fitness Centers</em></td>
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<tr>
<td>Funeral Home</td>
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</table>
## Table 4.06
**TABLE OF OFFICIAL USES**

<table>
<thead>
<tr>
<th>USE</th>
<th>R1</th>
<th>R2</th>
<th>OB</th>
<th>C</th>
<th>I</th>
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<tbody>
<tr>
<td>Gasoline Service Station</td>
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<tr>
<td><em>Group Home</em></td>
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<td>P</td>
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<tr>
<td><em>Group Residence</em></td>
<td>SEU</td>
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<td>P</td>
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<tr>
<td><em>Health Care Facility</em></td>
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<td></td>
<td>P</td>
<td>P</td>
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<tr>
<td>Home Occupation (See sub-section 5.01 E. 6)</td>
<td>P</td>
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<td>P</td>
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<tr>
<td><em>Kennel</em></td>
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<tr>
<td>Laundromat</td>
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<tr>
<td>Library</td>
<td>SEU</td>
<td>SEU</td>
<td>SEU</td>
<td>P</td>
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<tr>
<td>Lodging: hotel &amp; motel</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td><em>Manufacturing; assembly</em></td>
<td>SEU</td>
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<td></td>
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<tr>
<td><em>Manufacturing; assembly, outdoor operations</em></td>
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<tr>
<td><em>Manufacturing Retailer</em></td>
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<tr>
<td><em>Mini (Self Storage) Warehouse</em></td>
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<td>Mineral extraction and general mining</td>
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<tr>
<td><em>Mobile Home</em> (See sub-Section 12.02)</td>
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<td>Movie Theatre</td>
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<td>Movie Theatre, drive-in/outdoor</td>
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<tr>
<td><em>Museums &amp; Art Galleries</em></td>
<td>SEU</td>
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<td>Nursing Home</td>
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</table>
Table 4.06
TABLE OF OFFICIAL USES

<table>
<thead>
<tr>
<th>USE</th>
<th>R1</th>
<th>R2</th>
<th>OB</th>
<th>C</th>
<th>I</th>
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<tbody>
<tr>
<td>Office; Professional Office</td>
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<td>Park, Active</td>
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<td>Park, Passive</td>
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<td>Parking lot, Accessory</td>
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<td>Personal Service Establishment</td>
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<td>Post Office</td>
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<td>Public Service and Utility Use</td>
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<td>Recreational Facility, indoor</td>
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<td>Recreational Facility, outdoor</td>
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<td>Recycling Facility</td>
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<td>Residential Facility for the Developmentally Disabled</td>
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<td>Residential Facility for the Mentally Ill</td>
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<td>Restaurant, all types</td>
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<td>Retail Sales</td>
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<td>Salvage Yard</td>
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<td>Schools, K-12</td>
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<td>Schools - Post-Secondary, Technical, Trade</td>
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<td>Truck Terminal</td>
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<td>Wind Energy Facility (See sub-Section 12.04)</td>
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<td>Wireless Telecommunication Facility (See sub-Section 12.03)</td>
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</tbody>
</table>
CHAPTER 5

ACCESSORY AND TEMPORARY USES, BUILDINGS AND STRUCTURES

Section 5.01 Accessory Uses, Buildings and Structures.

(A) General.

(1) Accessory uses, buildings and structures shall be permitted in all zoning districts, provided, however, that the primary use which is supported by the accessory use, building or structure is a permitted use within the district to which a lot is zoned.

(2) An accessory use, building or structure shall be required to obtain an improvement location permit prior the establishment of said accessory use, building or structure, provided however, accessory buildings and structures less than or equal to one hundred and twenty (120) square feet in area, or less than thirty (30) inches in height, are exempt from this requirement.

(3) Accessory uses, buildings or structures shall not be permitted on a lot prior to the erection of the primary building.

(4) Accessory uses, buildings and structures shall comply with all development standards of the applicable district in which the accessory use, building and structure is permitted, unless an exception is specifically provided for in this Section 5.01.

(5) Accessory uses, buildings and structures shall not encroach upon any platted or recorded easements unless specifically authorized by the terms of the easement, or by written consent of the agency in whose favor the easement is granted.

(6) Accessory buildings and structures may not be established and / or used for the storage of material, goods and implements not directly associated with a permitted use within the district to which a lot is zoned.

(7) Accessory uses, buildings and structures shall be located so as not to cause any congestion or interference in or to the public right-of-way, or interfere or conflict with sidewalks, walkways, pedestrian ways, entrances or exits to or from the business or building, parking areas, loading areas, driveways, interior access drives, perimeter landscape yards or foundation landscaping.

(8) Accessory uses, buildings and structures shall comply with Section 1.20 Clear Sight Area Requirements of this Ordinance.
(B) Permitted Accessory Uses, Buildings and Structures.

(1) In the R1 Residential District, accessory uses, buildings and structures include, but are not limited to: awnings; boathouses; cabanas and pool houses; canopy storage shelters when permanently anchored to a footing; children's playhouses and structures; decks; docks; fences; game courts, such as tennis and basketball courts; garages and carports; home occupations; hot tubs; mini-barns and storage sheds; outdoor fireplaces; patios; porches; radio sending and receiving antennas; satellite dish antenna; signs; swimming pools; and swings.

(2) In the R2 Multi Family District, accessory uses, buildings and structures include, but are not limited to: all uses, buildings and structures permitted in subsection (1), above; leasing offices; bathhouses; canopies; common areas such as exercise and meeting rooms; maintenance buildings; parking areas; and trash containers.

(3) In the OB Office Buffer District, accessory uses, buildings and structures include, but are not limited to: all uses, buildings and structures permitted in subsections (1) and (2), above; and accessory living quarters.

(4) In the C Commercial and I Industrial Districts, accessory uses, buildings and structures include, but are not limited to: all uses, buildings and structures permitted in subsections (1), (2) and (3), above; donation boxes; drive-through facilities; gasoline pump islands, air dispensers and vehicle vacuums; outdoor display area; outdoor storage; vehicular canopy; and vending machines.

(C) Development Standards for Attached Accessory Uses, Buildings and Structures.

(1) The total floor area of accessory use portions of a primary building containing a single family dwelling unit shall be less than the main floor area of said single family dwelling unit.

(2) The total floor area of accessory use portions of a primary building containing a two-family dwelling unit shall be less than the main floor area of the smaller of the two-family dwelling units.

(3) In the R1, R2 and OB Districts, no garage or garages, in combination, shall exceed a capacity of four (4) cars in total when the lot contains a single family and two-family unit, or an office use. Carports and canopy storage shelters shall be included in determining the maximum capacity of a garage or garages.


(1) The total square foot area of a detached accessory building, or combination of accessory buildings when the lot contains a single family and two-family unit, or an
office use, shall be less than the main floor area of the primary building, or buildings, or twelve hundred (1,200) square feet, whichever is less.

(2) Detached accessory buildings shall not be located between the established front building line and the front lot line, notwithstanding sub-section 5.01 (D) (3), below.

(3) River Lots. Recognizing the unique characteristics of a lot where one or more of the lot lines borders a river, bay, creek, or lake, such lots are exempt from the prohibition that accessory buildings not be any closer to the front lot line than the front of the building. Accessory buildings may be erected within the required front yard setback line. Accessory buildings may have a front yard in depth equal to the average depth of the front yards of lots immediately adjacent on either side, but no front yard may be less than fifteen (15) feet in depth. Adjacent unimproved lots shall be considered as having a front yard as required for the district in which it is located.

(4) Accessory uses and buildings located in side and rear yards shall be no closer than five (5) feet from the side and rear lot lines or encroach upon any established easements unless specifically authorized by the terms of the easement, or by written consent of the agency in whose favor the easement is granted.

(5) All uses and operations shall be conducted completely within enclosed buildings, except where expressly permitted in Section 5.01 (E), below.


(1) Donation Boxes and Receptacles.

Donation boxes and receptacles shall not be located in any front setback, side setback, or rear setback.

Donation boxes and receptacles shall not interfere with any required parking spaces, or the safe and efficient flow of vehicular and pedestrian traffic around the parking area established for the primary use of the site.

(2) Drive-Through Facilities.

Drive-through facilities such as but not limited to: automated teller machines (ATM's), bank teller windows, car washes, drive through customer service windows, gasoline pump islands, ordering lanes and payment windows, shall have sufficient vehicle stacking area(s) so as not to conflict with Section 5.01 (A) (7), above.
(3) Fences.
   (a) Fences located between the front lot line and the front building line shall not exceed four (4) feet in height above grade or be less than fifty percent (50%) open.
   (b) Fences located behind the front building line shall not exceed eight (8) feet in height, or ten (10) feet in height in an Industrial District.
   (c) Fences are exempt from the minimum side and rear setback requirements.
   (d) Security wire fences shall:
       1. include but are not limited to: barbed wire; electric; razor wire or other similar types of security wire fences;
       2. only be permitted to secure non-residential uses and equipment including but not limited to: heating, ventilating and air-conditioning units; outdoor storage areas; public safety facilities; public and private communication facilities such as wireless, radio and television communication towers; restricted public access areas such as sewer & water treatment facilities; utility sites such as water, sewer, electric and gas main facilities;
       3. not exceed ten (10) feet in height; and
       4. not be located between the front lot line and the building line.

(4) Game Courts.

Game Courts shall not be located in any front setback or side setback, or between the established front building line and the front lot line provided, however, a permanent or temporary basketball goal may be located adjacent to a driveway or interior access drive in any minimum yard in any residential use.

(5) Gasoline Pump Islands, Air Dispensers, Vehicle Vacuums and Vehicular Canopies.
   (a) Gasoline pump islands shall not be located within the front, side or rear setback.
   (b) Air dispensers, vehicle vacuums and other like equipment shall be located no closer than fifteen (15) feet from the front lot line and shall meet all minimum side and minimum rear yard setbacks.
(c) Vehicular canopies shall be located no closer than ten (10) feet from the front property line and shall meet all minimum side and rear yard setbacks.

(6) Home Occupations.

(a) Home occupations shall be permitted in all residential districts.

(b) The following standards are established to insure compatibility of home occupations with other permitted uses and with the residential character of the district and neighborhood in which the home occupation is located, as well as clearly establishing the secondary or incidental status of home occupations in relation to the primary use of the lot for dwelling purposes:

1. home occupations shall be limited to family members residing within the dwelling and who make the dwelling their primary place of residence;

2. all aspects of the home occupation shall be conducted within the dwelling unit and or accessory buildings;

3. the use of the dwelling unit for the home occupation shall be incidental and subordinate to the use for residential purposes by the occupants, and no more than twenty-five percent (25%) of the combined floor area of the dwelling unit and accessory buildings shall be used in the conduct of the home occupation;

4. there shall be no structural alterations to the interior of the dwelling to accommodate a home occupation which would render the dwelling undesirable for residential use;

5. there shall be no structural additions, enlargements or exterior alterations changing the residential appearance of the dwelling or the lot, or other visible indications of the conduct of the home occupation;

6. there shall be no additional or separate entrance to the dwelling for the purpose of conducting the home occupation;

7. there shall be no internal or external alterations, construction features, or use of electrical or mechanical equipment which would change the fire rating of the structure;

8. not withstanding Chapter 10 Sign Regulations, of this Ordinance, no more than one (1) sign not exceeding three (3) square feet in area, non-illuminated and affixed to the building;
9. there shall be no outdoor storage of any kind related to the home occupation;

10. there shall be no traffic generated by a home occupation which is greater in volume than that which would be normally expected in the residential area in which the home occupation is located;

11. there shall be no electrical or mechanical equipment utilized in the home occupation which will create any visual or audible interference with radio or television reception, or which will cause fluctuations in line voltage off the premises;

12. there shall be no equipment or process used in the home occupation which creates noise, vibration, glare, smoke, fumes, odors, or electrical interference detectable to the normal senses at any point beyond the lot line in such a manner as to annoy, disturb, frighten or otherwise interfere with the use and quiet enjoyment of adjacent properties, or which creates water usage or the production of sewage other than domestic in nature; and

13. the home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises other than vehicles normally associated with residential home delivery (i.e., postal or parcel delivery vehicles).

(7) Permitted Home Occupations.

By way of example, the following uses, when conducted in compliance with the conditions set forth above, qualify as permitted home occupations:

(a) Artist's, musician's or writer's personal studio;
(b) Barber or beautician, limited to one (1) chair;
(c) Cake making or decorating (not a catering or commercial bakery facility);
(d) Child care limited to no more than five (5) children;
(e) Internet-based services, such as but not limited to data processing, word processing or transcription services;
(f) Dressmaking, millinery, sewing or tailoring;
(g) Cottage school (home school);
(h) Personal office;
(i) Professional service, limited to one client at a time, such as but not limited to: accountant, insurance agent and photographer;
(j) Teaching or tutoring, such as but not limited to academic subjects, art, dance and musical instruments, limited to a maximum of two (2) pupils at a time; and
(8) Prohibited Home Occupations.

The following uses, by the nature of the investment or operation, have a pronounced tendency, once started, to rapidly increase beyond the limits specified above for home occupations and impair the use, value and quiet enjoyment of adjacent residential properties. Therefore, the uses specified below and other similar or comparable uses shall not be permitted as home occupations:

(a) Retail sales, such as but not limited to antique, book or gift shop;
(b) Repair services requiring any outdoor activity and storage of material, equipment or product;
(c) Barber shop, beauty shop/parlor/salon, with more than one (1) chair;
(d) Dance studio;
(e) Dental office or clinic;
(f) Freight, trucking or shipping;
(g) Medical office or clinic;
(h) Painting of vehicles, trailers, boats, etc;
(i) Restaurants, eating or drinking establishments;
(j) Tool or equipment rental;
(k) Tooling, welding or machine shop;
(l) Veterinary clinic, kennel, or stable; and
(m) Any use not in compliance with the intent and conditions set forth in this Section.

(9) Outdoor Display or Sales of Merchandise.

(a) Shall be located so as not to interfere or conflict with sidewalks, walkways, pedestrian ways, entrances or exits to or from the business or building, required parking areas, required loading areas, driveways, interior access drives and driveways, perimeter landscape yards, or foundation landscaping.

(b) Outdoor display or sales of merchandise may be located no further than ten (10) feet in front of the established front building line unless the items displayed during established business hours are removed after every close of business;

(c) When such outdoor display or sales consist of the sale or rental of automobiles, trucks, buses, recreational vehicles, equipment and the like, then the area used for such outdoor display or sales shall be located no closer than five (5) feet from the front lot line and shall have direct access to an interior access drive for each vehicle. The outdoor display area shall be considered parking areas for
the purpose of determining and providing interior parking islands in compliance with Chapter 8 Landscape Regulations of this Ordinance;

(d) Vending machines such as but not limited to video rentals, newspaper boxes, propane exchanges, ice chests, etc. shall abut the exterior wall of the building.

(10) Outdoor Seating:

(a) May be located between the minimum building setback line and the front lot line.

(b) Shall not be located in any street right-of-way unless otherwise approved by the Indiana Department of Transportation (if applicable) and the Town;

(c) Shall be included in the calculation of required foundation landscaping area and any applicable building foundation landscaping area, and such associated foundation landscaping shall be extended or relocated around the perimeter of the outdoor seating area;

(11) Outdoor Storage.

(a) Outdoor storage of materials or products shall not be located between the front lot line and the established minimum front building line.

(b) Outdoor storage of materials or products shall be screened from view from all public rights-of-way.

(c) Outdoor storage of materials or products shall be screened from view from all residential lot lines by buildings or Type C/Full Screening per Chapter 8 Landscape Regulations.

(d) The height of outdoor storage of materials or products shall not exceed the height of the fence.

(e) Outdoor storage areas shall be surfaced with a durable, dust-free surface such as but not limited to concrete, asphalt, brick or other suitable surface.

(12) Outdoor Operations.

All operations, servicing and processing (except outdoor storage, off-street parking and off-street loading) shall be conducted within completely enclosed buildings, unless approved through a Special Exception Use.

(13) Satellite Dish Antennas.
Chapter 5
Accessory and Temporary Uses, Buildings and Structures

One (1) ground-based satellite dish is permitted per lot in all districts, provided that it is not placed closer to the front property line than the rear building line. Satellite dishes may be located on the principal structure.

(14) Small Wind Energy Conversion System, per the requirements of Section 12.04 of this Ordinance.

(15) Stoops, Patios, Porches, Gazebos and Decks.

(a) Stoops, patios, porches, gazebos, decks over thirty (30) inches above grade, or which include a roof or roof-like structure (e.g., trellis, arbor, and the like) shall comply with all minimum yards and building setbacks, and maximum building height regulations of the applicable district for accessory structures, and shall be included in the calculations for maximum lot coverage.

(b) Stoops, patios, porches and decks less than thirty (30) inches above grade and which do not include a roof or roof-like structure, may be located in a minimum front, side and rear yard, provided however, such stoop, patio, porch or deck is no closer than fourteen (14) feet to the front lot line and shall not be included in the calculations for maximum lot coverage.

(16) Swimming Pools and Hot Tubs.

(a) A swimming pool or hot tub, greater than forty-two (42) inches in depth, shall comply with the applicable requirements of the Indiana Administrative Code for residential pools at 675 IAC 14-4.3-270 through 296, as amended; and for commercial pools at 675 IAC 20, as amended.

(b) Swimming pools meeting the depth requirements of subsection (a) above, shall be enclosed by a fence no less than four (4) feet and no greater than eight feet (8) feet in height, measured from the grade level, five (5) feet beyond the fence line.

(c) A swimming pool or hot tub shall not be located between any front lot line and the established front building line.

(d) A swimming pool or hot tub located in side and rear yards shall be no closer than five (5) feet to the side and rear lot lines.

(e) All swimming pools or hot tubs, including associated decking and aprons over thirty (30) inches above grade, shall be included in the calculation of maximum lot coverage.
(f) No swimming pool or hot tub shall be erected or constructed unless adequate distance from overhead electrical wires is provided in accordance with National Safety Code and the National Electrical Code, current additions.

(g) Abandoned or unused swimming pools or hot tubs, situated on a premises which are not occupied for periods of thirty (30) days or more, shall be drained, filled in, or equipped with a cover adequate to prevent persons, children or animals from danger or harm.

(17) Trash and Recycling Containers and Receptacles.

Any container or combination of containers exceeding thirty-six (36) cubic feet in capacity shall:

(a) Be screened on at least three (3) sides by a building wall or a solid-walled enclosure, not less than six (6) feet in height nor more than ten (10) feet in height above grade, equipped with an opaque screen gate, and any solid-walled portion of the enclosure shall be provided with foundation landscaping;

(b) Not be located between the front building line of the primary building and the front lot line; and,

(c) Not be located in any minimum front, side yard or rear yard.

(18) Underground Structures.

Underground structures such as but not limited to fallout shelters, storm shelters and utility vaults are permitted in all districts.

(19) Vehicles, Parking and Storage in Residential and Office Buffer Districts.

(a) The following categories of vehicles shall be permitted to be parked or stored on lots within the residential and office buffer districts, subject to the development standards provided below:

“Personal Passenger Vehicles” - Vehicles designed with the intent of being utilized primarily for personal transportation, used by the occupants of the property, which are not used for commercial purposes, such as but not limited to cars, pickup trucks, sport utility vehicles, passenger (mini) vans, and motorcycles. Personal passenger vehicles must be operable and properly licensed and registered.
“Small Work-Related Vehicles”- Motorized vehicles utilized for commercial purposes with gross vehicle weight ratings (GVWR) of 14,000 pounds or less and lengths of 25 feet or less, such as but not limited to company-owned passenger vehicles, cargo and service vans, and pickup trucks. Small work-related vehicles must be operable and properly licensed and registered. If parked on a residential lot, small work-related vehicles must be used by a resident of the property as the primary means of transportation to and from the workplace or regularly utilized in the operation of a lawful home occupation.

“Large Work-Related Vehicles”- Motorized vehicles utilized for commercial purposes with gross vehicle weight ratings (GVWR) of greater than 14,000 pounds or lengths of greater than 25 feet, such as but not limited to buses and tow trucks. Large work-related vehicles must be operable, properly licensed and registered, and parked within a fully enclosed accessory structure. If parked on a residential lot, large work-related vehicles must be used by a resident of the property as the primary means of transportation to and from the workplace.

“Large Recreational Vehicles”- Passenger recreational vehicles and vehicles for recreational hauling, such as but not limited to campers, motor homes, RVs, personal cargo trailers, and large watercraft. Large watercraft stored on a trailer shall be considered one vehicle for the sake of this ordinance. Parked or stored recreational vehicles shall not be occupied or used for living, sleeping, or housekeeping purposes.

“Small Recreational Vehicles”- Personal recreational vehicles such as but not limited to ATVs, dirt bikes, snowmobiles, personal watercraft, and small non-motorized watercraft such as but not limited to canoes, kayaks, and rowboats.

(b) Parked or Openly Stored Vehicles in Residential or Office Buffer Districts:

<table>
<thead>
<tr>
<th>Type of Vehicle</th>
<th>Maximum Number of Vehicle Type Permitted on Lot</th>
<th>Location Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Passenger</td>
<td>Unlimited, if in compliance with the definition above</td>
<td>Must comply with clear site area requirements in Section 1.20</td>
</tr>
</tbody>
</table>
Vehicle parking and storage shall be located in compliance with Section 1.20 Clear Sight Area Requirements.

Residential and Office Buffer Districts.

1. Vehicles as defined in sub-Section (19) (a) 3 and 4 above, shall not be parked in any required front, side or rear yard setback;
2. Not more than a total of two (2) vehicles in any combination as defined in subsection (19) (a) 2, 3 and 4 above, shall be permitted to be parked or stored in the open on the same lot at any one time.

3. Parked or stored recreational vehicles shall not be occupied or used for living, sleeping, or housekeeping purposes.

Section 5.02  Temporary Uses, Buildings and Structures.

(A) General.

(1) Temporary uses, buildings or structures shall be permitted in all zoning districts, provided, however, that the primary use which is supported by the temporary use, building or structure is a permitted use within the district to which a lot is zoned.

(2) A temporary use, building or structure exceeding seventy-two (72) hours in duration shall be required to obtain an improvement location permit prior to the establishment of the use, building or structure.

(3) Any temporary use, building or structure shall comply with all applicable height and setback requirements in the district in which the temporary use, building or structure is located.

(4) All buildings, structures or debris associated with the temporary use shall be removed from the site immediately upon completion or cessation of the temporary use, or expiration of the time period set forth in the improvement location permit.

(5) A temporary use, building or structure which will be converted into a permanent primary or accessory use after the cessation of the temporary use, shall be required to obtain an improvement location permit prior the establishment of the use or the construction of any structure or building, and meet all development standards in which the converted temporary use, building or structure is located.

(B) Permitted Temporary Uses, Buildings and Structures.

Permitted temporary uses, buildings and structures include but are not limited to: construction-related activities; garage and yard sales; mobile classrooms; open-air assemblies; sales and leasing offices; roadside stands; temporary signs (see Chapter 10 Sign Regulations for additional regulations); and tents.
Chapter 5
Accessory and Temporary Uses, Buildings and Structures

(C) Construction Activities.

(1) Construction activities include but are not limited to: borrow pits, contractor offices and storage trailers, portable asphalt and concrete plants, equipment and testing sheds, equipment and material staging areas.

(2) Any use listed in subsection (1), above, may be permitted for a period of time not to exceed the duration of the project that they are associated with. The Zoning Administrator, for good cause shown, may extend the duration for a period not to exceed one year past project completion.

(3) Uses shall be located in compliance with all minimum yard and setback requirements and comply with Section 1.20 Clear Sight Area Requirements.

(4) All construction activities shall minimize excessive dust, noise and storm water runoff per the applicable regulations of Federal, State and local regulations.

(D) Garage Sales (Yard Sales).

(1) Notwithstanding any regulations above to the contrary, a garage sale may be conducted on a premise which includes a dwelling unit.

(2) A garage sale may be conducted three (3) times each calendar year per lot and shall not exceed three (3) consecutive days in duration.

(3) A garage sale shall only be conducted during the hours from sunrise to sunset;

(4) All personal property exhibited outdoors during a garage sale shall be placed within a building or structure or otherwise removed from the premises immediately following the end of the garage sale.

(5) Garage sale signs shall comply with the applicable provisions of Section 10.08 Temporary Signs; A garage sale sign shall be exempt from the requirement of this Ordinance to obtain an improvement location permit for a temporary use.

(6) Nothing in this Section shall be construed to prohibit one (1) or more owners or occupants from conducting a combined garage sale on one (1) of the lots owned or occupied by the participants, provided that all other provisions of this Section 5.02 Temporary Uses, Buildings and Structures are complied with.

(7) Personal property exhibited outdoors during a garage sale may be located in a minimum front, side or rear yard, provided, however, such personal property shall not be located in any public right-of-way.
(E) Mobile Classrooms, Sales and Leasing Offices.

(1) Mobile classrooms, sales and leasing offices may be permitted for a period not to exceed five (5) years from the date of issuance of an improvement location permit.

(2) Under-skirting shall be installed around the entire perimeter of the building or structure.

(3) The building or structure shall be located in compliance with all minimum yard and setback requirements.

(F) Mobile Homes.

Mobile homes shall be permitted as a temporary dwelling subject to the following requirements:

(1) Mobile homes are permitted only as a Conditional Use.

(2) Mobile homes may be used as temporary dwellings for a period of time not to exceed twelve (12) months on any lot where the primary dwelling was damaged or destroyed by fire or other natural disaster, provided the owner has requested a permit for such temporary use within three (3) month of the occurrence of the damage or destruction, and intends to begin reconstruction of a permanent dwelling as soon as practicable.

(3) Mobile homes are permitted for a care giver or a care receiver residing on the same lot as a permitted single family dwelling, subject to the following requirements:

   (a) The mobile home shall represent no more than a second dwelling on the lot;

   (b) The mobile home shall be occupied by a family or family member who either provides or receives not less than weekly assistance to the family or family member residing in a dwelling unit permitted in the district;

   (c) A certification from a medical doctor shall be provided stating that the family or family member to receive the assistance is in need of such assistance and establishes the frequency of the assistance needed; and

   (d) The mobile home shall be limited to a period of time not to exceed three (3) years in duration from the date of approval.

(G) Recreational Vehicle, Camping or Travel Trailer.

(1) A recreational vehicle and camping or travel trailer may at no time be used for an extra bedroom, playroom or storage place for the occupants of the lot.
(2) A recreational vehicle and camping or travel trailer, belonging to a guest of the occupant of a residential dwelling, may be parked and occupied for lodging purposes on the same lot as the dwelling for not for more than seventy-two (72) hours in a thirty-day (30) period.

(H) Roadside Stands and Seasonal Sales.

(1) In the R1, R2 and OB zoning districts, there shall be no more than one (1) stand per lot, and it shall be erected and used solely for the purpose of displaying and selling agricultural products produced on the premises. The roadside stand shall be dismantled and removed at the end of the growing season.

(2) In the C and I zoning districts, seasonal sales displays shall not exceed sixty (60) consecutive days per occurrence, nor a total of one-hundred and twenty (120) days during any calendar year.

(3) Roadside stands and seasonal sales displays shall not encroach into the public right-of-way, the clear sight area requirements per Section 1.20, or interfere with any other development standards required by this ordinance, such as but not limited to, parking and landscaping requirements.

(I) Mobile Sales.

(1) For purposes of this subsection, mobile sales shall apply to, but not be limited to food trucks, street vendors and transient merchants.

(2) Mobile sales activities shall not encroach into the public right-of-way, the clear sight area requirements per Section 1.20, or interfere with any other development standards required by this ordinance such as but not limited to parking and landscaping requirements.

(3) The time of operation for any mobile sales activities shall occur between the hours of sunset and sundown as determined by local time, for that particular day of the year in which the mobile sales activity is taking place.

(4) An improvement location permit is required for all mobile sales activities.

(J) Tents.

(1) An improvement location permit is required to erect or use a tent for a period in excess of seven (7) days.
(2) The tent's operations and activities shall be in conformance with all other Town Ordinances and Codes, and in conformance with all applicable development standards of the district in which it is located.

(3) The improvement location permit shall be for an initial period not to exceed sixty (60) days. The improvement location permit may be extended for an additional sixty (60) day period. The total consecutive period shall not exceed One-Hundred Twenty (120) days.

(4) Tents shall not be erected, used or maintained for permanent dwelling, lodging, storage of equipment, storage of vehicles, or as shelter for animals.
Chapter 6  Reserved.
CHAPTER 7

PLANNED UNIT DEVELOPMENT DISTRICT

Section 7.01 Intent.

(A) The Planned Unit Development (PUD) District is designed and intended to: encourage creativity and innovation in the design of developments; provide for more efficient use of land; permit special consideration of property with outstanding natural or topographical features; encourage imaginative uses of open space; further the purposes of the Comprehensive Plan; and, provide for any individual land use not otherwise specified elsewhere in this Ordinance.

(B) The PUD District is not intended for the development of residential subdivisions or other developments which are provided for as a matter of right within any district of this Ordinance.

Section 7.02 Permitted Uses and Development Standards.

(A) Permitted Uses.

(1) Primary uses in the PUD District shall be any use or range of uses specified in the PUD District Ordinance establishing such District, either in text form or as noted in the preliminary plan filed with the petition for zone map change, or any combination thereof. Primary uses, by way of example, may include any residential, commercial or industrial land use, or any individual land use or combination of land uses deemed appropriate for the real estate.

(2) Accessory uses, home occupations or temporary uses, unless otherwise specified in the petition for zone map change to the PUD District and incorporated into the PUD District Ordinance establishing such District, shall be permitted in a manner customarily associated with the primary use specified in the PUD District ordinance.

(B) Development Standards.

(1) Development standards applicable to a PUD shall be those standards specified in the PUD District Ordinance establishing such district, either in text form, or as noted on the preliminary plan filed with the petition for zone map change, or any combination thereof.

(2) Every petition for zone map change to the PUD District shall specify development standards applicable to each permitted use in the PUD District and, at a minimum,
shall adopt or include a variation of each development standard that is applicable to each such use in the district in which each such use is first permitted.

(3) In any case in which an applicable development standard has not been specified in the petition for zone map change to the PUD District, the development standard shall be that which is specified in the district in which the use is first permitted unless the petition for zone map change to the PUD District contains:

(a) A statement that the petitioner does not want an otherwise applicable development standard for any permitted use in the PUD to be applicable;

(b) An alternate development standard; and,

(c) The statement and alternate development standard are included in the PUD District Ordinance establishing such district.

Section 7.03 Procedure for Approval of a Planned Unit Development.

(A) The complete review and approval process for a Planned Unit Development consists of three (3) elements:

(1) Concept Plan review;

(2) Preliminary Plan approval and zone map change; and,

(3) Secondary Approval.

(B) The filing of a Concept Plan is required. The filing of a Concept Plan and the review of the Concept Plan by the Staff will create an understanding between the Staff and the developer which may help to alleviate future misunderstandings and extensive revisions.

(C) A petitioner may elect to proceed with Preliminary Plan approval and Secondary Approval separately, or may elect to combine them for joint approval as set forth in sub-Section 7.06 (C)(2), below. If a petitioner elects to combine secondary and primary approval, both shall be docketed before the Area Plan Commission for a joint hearing.

(D) If filed separately, the procedure for filing for approval of a zone map change shall be the same as that required for any other petition for zone map change before the Area Plan Commission, except as otherwise provided for in this Chapter.
Section 7.04   Filing and Review of a Concept Plan.

(A) The petitioner shall submit a *Concept Plan*, which may be supplemented with a written description of the proposed PUD, for review by the *Staff* prior to filing a petition for zone map change to the PUD District.

(B) *Staff* shall review the proposed *Concept Plan* taking into consideration information regarding the terrain of the site and any unique natural features of the site. In doing so, the review by *Staff* may include, but shall not be limited to, the following:

1. Protection of unique topographical features on the site, including, but not limited to, slopes, streams, natural water features, floodways, floodplains and regulated drains;
2. Protection and preservation of wooded areas, individual trees of significant size, wetlands, or other environmentally sensitive features;
3. Development of common areas, *open space* or recreational areas (passive or active) accessible to the residents or users of the PUD by way of sidewalks, footpaths or combined walkways/bikeways;
4. A more efficient use of the land including the reduction of land area disturbed for utility lines and motor vehicle access;
5. Creation of innovative residential and business environments;
6. Minimize the alteration of the natural site features through the design and situation of individual lots, *streets* and *buildings*;
7. Diversity and originality in lot layout;
8. Utilization of individual building designs which achieve an enhanced relationship between the development and the land; and,
9. Relationship to surrounding properties.

(C) The *Executive Director* shall notify the petitioner of any *Staff* comments related to the design of the proposed *Concept Plan* submitted for review within fifteen (15) business days of the submittal. Upon receipt of *Staff* comments, the Petitioner may:

1. Modify the proposed *Concept Plan* and resubmit a revised *Concept Plan* for a second round of review by *Staff*; or,
Chapter 7
Planned Unit Development District

(2) File a petition for zone map change as set forth below.

(D) Notwithstanding anything contained in this Ordinance to the contrary, neither the Staff’s review of the proposed Concept Plan submitted for review nor Staff’s comments to the petitioner relating thereto shall be considered a denial, approval or decision concerning the proposed Concept Plan.

Section 7.05 Filing Petition for Zone Map Change.

(A) Petition. A PUD District Ordinance petition shall contain a preliminary plan that satisfies the requirements below, and shall specify in either general terms or detailed terms the permitted uses and development standards that will apply to the real property included in said petition.

(B) Detailed Terms. A preliminary plan which includes a detailed description of all development requirements that apply to the proposed PUD on any of the site plans, building elevations, landscape plans, sign plans, or any other plan required by this Ordinance in sufficient detail to fulfill the requirements for the issuance of an improvement location permit, shall be deemed to have expressed, in detailed terms, the development requirements that apply.

(C) General Terms. All preliminary plans or submittals which do not comply with the requirements above for detailed terms shall be deemed to have expressed the development requirements that apply to the proposed PUD in general terms only and shall require secondary approval, as set forth below, prior to the issuance of an improvement location permit.

Section 7.06 Filing and Review of Preliminary Plan.

The petitioner must file an application requesting primary approval, and submit plans consisting of the following:

(A) A site development plan of the overall PUD, drawn to a scale of not more than one inch equals one hundred feet (1”=100’) and shall be on plan sheets not to exceed twenty-four by thirty-six (24” x 36”) in size, which:

(1) Depicts the location of proposed land uses and maximum land use densities;

(2) Expresses development standards in either general terms or detailed terms;

(3) Proposed layout of streets, open space and other basic elements of the development;
Chapter 7
Planned Unit Development District

(4) All public and private streets and pedestrian ways within two-hundred (200) feet of the site;

(5) North arrow, written and graphic scale, general location map;

(6) Percentage of site devoted to open space;

(7) A preliminary sign plan; and

(8) Proposals for handling traffic, parking, sewage disposal, drainage, tree preservation, and other pertinent development features.

(B) Determination by the Area Plan Commission. In its determination of the appropriateness of the proposed PUD and whether to recommend approval of the zone map change to the Town, the Area Plan Commission shall pay reasonable regard to the extent to which the proposal accomplishes the intent set forth in Section 7.01 Intent, above, and provides for the protection or provision of the site features and amenities outlined in sub-Section 7.04 (B), above.

(C) Preliminary Plan Approval and Secondary Approval

(1) Preliminary Plan Approval. If the preliminary plan expresses development standards in general terms, as described above, secondary approval as set forth in Section 7.07 Secondary Approval, below, shall be required prior to the issuance of an improvement location permit for any development pursuant to the PUD District Ordinance.

(2) Combined Preliminary Plan Approval and Secondary Approval. If the preliminary plan expresses development standards in detailed terms, as described above, the Petitioner may request secondary approval in connection with the approval of the zone map change to the PUD District, provided that any such approval shall be conditioned upon the Council adopting the zone map change to the PUD District. The requirements for a secondary approval are set forth in Section 7.07 Secondary Approval, below. If the preliminary plan expresses the development standards in detailed terms, as described above, the PUD District Ordinance must specify any plan documentation or supporting information that must be supplied before an improvement location permit may be issued for development of real property in the planned unit development district.

(D) Commitments, Conditions Or Surety.

(1) Commitments. Commitments may be permitted or required of the owner of the real property in connection with:
(a) A zone map change for a PUD District;

(b) A secondary approval of a PUD; or,

(c) A modification of permitted uses or development requirements of a PUD, as set forth in Section 7.07 Secondary Approval, below.

(2) Conditions. Conditions may be imposed on the approval of a PUD District which are reasonably necessary to assure compliance with the permitted use, development standards and minimum requirements of the PUD District Ordinance.

(3) Surety. Bonds or other written assurance may be required which are reasonably necessary to guarantee the timely completion of a public improvement required by the proposed PUD District Ordinance. Such bond or other written assurance shall be satisfactory to the Executive Director, and shall run to the Town.

Section 7.07 Secondary Approval

(A) Secondary Approval Required. Secondary approval is required in the PUD District as a prerequisite to the issuance of an improvement location permit for development of any real property in such district.

(B) Supporting Documentation. Before the issuance of a secondary approval, the petitioner must file an application requesting secondary approval and submit plans consisting of the following:

(1) Area map insert showing the general location of the proposed development referenced to major streets and section lines;

(2) Location map showing the names of all metes and bounds property owners, boundary lines of recorded subdivisions, zoning and land uses of adjacent properties;

(3) Proposed name of the PUD;

(4) Legal description of the real estate;

(5) Boundary lines of the proposed PUD;

(6) Location and name of all existing and proposed public or private streets, roads, access easements and rights-of-way within two-hundred (200) feet of the real estate;
(7) Location of all existing and proposed utility facilities and easements, including, but not limited to: sanitary sewer, water, storm water management, electric, gas, telephone and cable within two-hundred (200) feet of the real estate;

(8) Layout, number and dimension of all lots and out lots with zoning setback lines;

(9) Location, delineation and elevation of all floodway and floodway fringe areas within the boundaries of the PUD;

(10) Drainage plan;

(11) Landscape plan;

(12) Sign plan;

(13) An erosion control plan for all areas of site disturbance.

(14) Topographic contour every two (2) feet superimposed upon the proposed site plan portion of the site covered by the submitted plans;

(15) Proposed elevation of all building pads within the proposed development;

(16) All improvements to street system, on-site and off-site;

(17) Sidewalk plan or alternate plan for walkways or other pedestrian ways;

(18) Plans and specifications for all infrastructure improvements required or proposed in the PUD;

(19) Areas reserved for park, conservation, wetland, common area, lake or other similar uses;

(20) Proposed covenants, conditions and restrictions, if any;

(21) The character and approximate density of all proposed uses and structures in the plan area;

(22) Any other information specified elsewhere in this Ordinance as a prerequisite to the issuance of an improvement location permit; and
Chapter 7
Planned Unit Development District

(23) Any other information requested in writing by the Executive Director or Area Plan Commission in connection with the preliminary plan approval or requested in writing by the Executive Director within fifteen (15) business days of filing.

(C) The Area Plan Commission or Executive Director, during secondary approval review, shall specify any additional plan documentation or supporting information beyond that required by this subsection (B) above, which must be supplied before an improvement location permit may be issued for the development of any real estate located in the PUD District.

(D) Secondary Approval Authority.

(1) Secondary approval authority is hereby delegated to the Executive Director. The Executive Director shall have a period of not more than fifteen (15) business days in which to review the proposed secondary approval application and either:

(a) Render a decision of approval or denial concerning the secondary approval; or

(b) Request in writing additional information from the applicant. If additional information is requested, the Executive Director shall have an additional period of fifteen (15) business days to review the information from the date the requested information is received.

(2) The Executive Director may seek the advice and comment of the Executive Committee of the Area Plan Commission or other Staff members, as deemed appropriate, prior to making a decision.

(3) Any decision of the Executive Director under this Section may be appealed by any interested party to the Area Plan Commission in accordance with the procedures of Section 7.11 Appeals of Executive Director's Decisions, below.

(4) If, in the sole discretion of the Executive Director, there are questions regarding how the application for secondary approval fulfills the intent of the PUD District Ordinance or how the secondary approval expresses in detailed terms the general terms approved as part of the preliminary plan and zone map change to the PUD District, the Executive Director may refer the proposed secondary approval to the Area Plan Commission for review and determination.

(E) Proceedings/Notice. The proceedings required for secondary approval shall be the same as those required by this zoning ordinance for the review and issuance of an improvement location permit.
(F) Required Findings.

(1) The Area Plan Commission or Executive Director may issue a secondary approval only upon a finding that:

(a) The plans submitted for secondary approval satisfy the permitted uses and development standards specified in the PUD District Ordinance establishing such PUD District;

(b) The plans submitted for secondary approval accomplish the intent set forth in Section 7.01 Intent, above; and,

(c) The plans submitted for secondary approval provide for the protection or provision of the site features and amenities outlined in Section 7.04 (B), above.

(2) Written findings of each determination to approve or disapprove a secondary approval. If the Area Plan Commission makes a determination regarding a secondary approval, the written findings shall be signed by the President of the Area Plan Commission. If the Executive Director makes a determination regarding a Secondary Approval, the written findings shall be signed by the Executive Director.

(3) Said secondary approval and written findings, upon approval, shall be sealed with the Seal of the Area Plan Commission and retained in the office of the Area Plan Commission to be used in its continuing administration of the PUD.

(G) Secondary approval of a PUD District Ordinance, whether submitted in its entirety or in development phases, does not expire after the date of final approval. Upon an application for an improvement location permit for the use or development of the property, whether in its entirety or in development phases, all required improvements shall be designed and constructed with the latest standards in effect at the time of said application as adopted by the Town.

Section 7.08 Modification of Preliminary Plan or Secondary Approval

(A) Minor modifications to a preliminary plan or secondary approval which has already received approval from the Area Plan Commission or the Executive Director and which do not involve:

(1) The designation of additional land uses; or

(2) An encroachment into any drainage easement, regulated drain setback or floodplain,
Chapter 7
Planned Unit Development District

may be authorized by the Executive Director without a public hearing in its continuing administration of the PUD if, in the determination of the Executive Director, the requested minor modifications do not adversely impact the purpose or intent of the overall development.

(B) If the Executive Director determines that the proposed modification is of such a nature as to adversely impact the purpose or intent of the overall development, or if the proposed modification includes:

(1) The designation of additional land uses; or

(2) An encroachment into any drainage easement, regulated drain setback or floodplain,

the petitioner shall be required to file a new petition for zone map change.

Section 7.09 Secondary Plat Approval

The process for the approval and recording of a secondary plat for any development in a PUD approved pursuant to this Section shall be issued in a manner consistent with that for any other subdivision within the Town as set forth in the Subdivision Control Ordinance for the Town and with any additional requirements or commitments entered into in connection with the approval of the preliminary plan pursuant to this Section. The approval and recording of a secondary plat is required prior to the issuance of an improvement location permit for any improvements on a lot.

Section 7.10 Maintenance of Common Open Space

In those PUD Districts in which open space, common areas or recreation areas are provided for the use and enjoyment of residents or users of the PUD District, the petitioner shall file documentary assurances that the permanent dedication and continuous maintenance of open space, common areas or recreation areas shall be made in accordance with the approved preliminary plan and secondary approval, and that the open space, common areas and recreation areas shall be made available to the residents and users of the overall development in the PUD at a reasonable and non-discriminatory rate of charge. Such documentary assurances shall be incorporated into the secondary plat that is recorded in the Office of the St. Joseph County Recorder or otherwise provided for through legally binding perpetual agreements as approved by the Area Plan Commission and the Town. Such open space shall perpetually run with the PUD and shall not be developed or separated from the overall development in the PUD at a later date (unless no development of any portion of the PUD which is benefited by the open space, common areas or recreation areas has occurred and the entire area subject to the PUD is presented for zone map change).
Section 7.11 Appeals of Executive Director’s Decisions

(A) Generally. Any order, requirement, decision or determination by the Executive Director regarding a secondary approval, or a modification of a preliminary plan or secondary approval, may be appealed to the Area Plan Commission by any person claiming to be adversely affected by that order, requirement, decision or determination.

(B) Appeal Process. The procedures for such an appeal are as follows:

(1) Every appeal shall be filed within thirty (30) days from the order, requirement, decision or determination.

(2) All appeals shall be determined by the Area Plan Commission at a public hearing for which notice has been provided as follows:

(a) A remonstrator shall send notice to the owner of the real estate, the applicant for the secondary approval, or a modification of a preliminary plan or secondary approval, and all abutting property owners;

(b) A petitioner shall send notice to the owner of the real estate and all abutting property owners; and

(c) Notice shall be sent as provided by rule of the Area Plan Commission.

(3) The Area Plan Commission hearing shall be de novo, in the same manner as though the application was originally filed with the Area Plan Commission.

(4) The decision of the Area Plan Commission with respect to a secondary approval, or a modification of a preliminary plan or secondary approval, shall be a final decision that may be reviewed only by certiorari procedures as provided in I.C. 36-7-4-1016.
CHAPTER 8

LANDSCAPE REGULATIONS

Section 8.01 Intent.

Landscaping is an essential element of the site design process, and is an important feature in promoting the public health, safety, comfort, general welfare and the quality of life of the Town. Landscaping regulations are intended to: reduce the negative impacts of higher intensity land uses on less intense adjacent land uses; provide visual and noise buffering between higher intensity districts and less intense districts; lessen the impact of development on the environment by reducing glare and heat buildup; promote energy conservation; and break up large expanses of paved areas so as to reduce impervious surface area, storm water runoff, and the level of pollutants from non-point sources.

Section 8.02 General Provisions.

(A) Applicability. Within the Town, a zone map change (rezoning), new building construction, additions to existing buildings, new parking areas and parking area expansions, shall provide landscaping as required by this Section. Single family and two-family residential structures shall be exempt from this Chapter.

(B) Utility Easements. In those instances where overhead utilities are located within required yards, plant material selections shall be limited to trees which typically do not exceed twenty-five (25) feet in height at maturity. Appropriate utility easement plant materials include ornamental trees such as the redbud, dogwood and crabapple, or narrow-spread evergreen trees such as the emerald green arborvitae. In those instances where underground utilities are located within required yards, plant material selections shall be limited to ground cover, man-made elements or planting materials within raised beds which will not interfere with the underground utilities.

(C) Sight Triangle. Landscaping placed within the sight triangle of any entrance or drive shall meet the requirements of Section 1.20 Clear Sight Area Requirements.

(D) Live Vegetation. All trees and shrubs and applicable ground cover required by this Section shall be living vegetation, and shall comply with the size at time of planting as indicated in Table 8.02 Minimum Size at Time of Planting. Evergreen species that drops its lower branches (e.g., white pines) shall not be permitted as an "evergreen".

(E) Ground Cover. Ground cover within landscape areas may consist of grasses, preserved existing natural vegetation (i.e., thickets) or mulch, chipped bark or other natural forms of ground cover. Loose stone, rock or gravel may be used as a landscaping accent, but shall
Chapter 8
Landscape Regulations

not exceed twenty (20) percent of the area of the required landscape area in which it is used.

(F) Man-Made Elements. Man-made elements within landscape areas may consist of walls, berms, and fences.

(G) Placement of Landscaping. To the fullest extent possible, landscaping shall be placed on the development site. When circumstances dictate that landscaping required by this Section can only be placed in the public right-of-way to meet the requirements of this Section, permission must be sought and obtained from the Indiana Department of Transportation, or the Town prior to the placement of the landscaping. Required Type B/Partial Screening and Type C/Full Screening are calculated from, and begin at the established front building line to the rear building line.

(H) Credit for Preservation of Existing Trees, Vegetation and Fencing. In order to encourage the preservation of existing trees, vegetation and fencing, the Zoning Administrator may approve an alternative landscape plan which utilizes existing trees, vegetation and fencing in lieu of new plantings or fencing within required perimeter yards, building foundation areas, or interior off-street parking areas. Such alternative landscape plan shall:

(1) demonstrate that sufficient trees, vegetation or fencing shall be preserved to equal or exceed the level of screening required by the basic provisions of this Chapter; and,

(2) provide that, in the event trees, vegetation and fencing designated for preservation are damaged or die within three (3) years of completion of construction on the site, replacement trees, vegetation and fencing shall be replaced sufficient to provide landscaping and buffering which is equivalent to the minimum requirements of this Chapter for new landscaping.

(I) Location of Landscaping. Required landscaping areas shall consist of all four (4) of the following on a site:

(1) Perimeter yard landscaping
(2) Building foundation landscaping
(3) Off-street parking islands
(4) Off-street parking screening
Section 8.03 Perimeter Yard Landscaping.

(A) Landscaping of perimeter yards are incorporated into three (3) Types:

(1) Type A/Open. Type A/Open promotes and creates a pleasant visual experience from the public roads and between certain uses, while not obscuring the visual needs of a development. Type A/Open is required along all street frontages and between certain adjacent single family residential uses. Planting elements consist of an option of either deciduous shade or ornamental trees, as follows:

(a) Option 1: A minimum of one (1) deciduous shade tree planted every one-hundred (100) feet (rounded up to the nearest whole number) of the applicable front lot line, but no less than one (1) per lot. Such trees may be evenly spaced or grouped together; or,
Chapter 8
Landscape Regulations

(b) Option 2: A minimum of one (1) deciduous ornamental tree planted for every seventy-five (75) feet (rounded up to the nearest whole number) of the applicable front lot line, but no less than one (1) per lot. Such trees may be evenly spaced or grouped together.

(c) Option 3: Existing trees, vegetation or fencing per the requirements of sub-Section 8.02 (H), above.

Figure 8.02 Example of Type A/Open Landscaping

(2) Type B/Partial Screening. Type B/Partial Screening creates a partial visual and sound barrier (buffer) and is intended for use on lots where the abutting lots include residential uses or other less intense non-residential uses which may be affected by the lights, sounds and regular operations of the subject property. Type B/Partial Screening requires the use of evergreen trees to provide year-around buffering while allowing flexibility to add color and interest with deciduous trees or shrubs/hedge plants, as follows:

(a) Option 1: Two (2) evergreen trees, evenly spaced, for every fifty (50) feet (rounded up to the nearest whole number) of the length of the property line, but no less than two (2) per lot; or

(b) Option 2: One (1) evergreen tree and one (1) deciduous shade or ornamental tree evenly spaced, for every fifty (50) feet (rounded up to the nearest whole number) of the length of the property line, but no less than one (1) each per lot.

(c) Option 3: Existing trees, vegetation or fencing per the requirements of Section 8.02 (H), above.
(3) **Type C/Full Screening.** Type C/Full Screening creates a substantial visual and/or sound barrier between abutting properties, where one or more of the abutting properties of lesser *use* may be adversely impacted by the lights, sounds and regular operations of the higher intensity or *use*. Planting elements require significant use of evergreen trees and man-made elements to provide year-round buffering. Planting elements provide a continuous and effective barrier against light and noise between adjacent properties, as follows:

(a) **Option 1:** A minimum of four (4) evergreen trees planted every thirty (30) feet (rounded up to the nearest whole number) of the applicable *side* and *rear lot line*. Such trees shall be evenly spaced in a staggered double row, where the rows are not more than 12.5 feet apart. The minimum requirements of this subsection may be reduced by half between the *front lot line* and the established *building line*; or

(b) **Option 2:**

1. Between the *front lot line* and the *front building line*, a fence four (4) feet high above grade, and at least fifty percent (50%) open, and

![Figure 8.03 Example of Type B/Partial Screening](image-url)
2. Between the front building line and the rear property line, a solid, opaque man-made element at least six (6) feet in height and no higher than eight (8) feet in height, or ten (10) feet in height in an industrial district; or

(c) Option 3: A combination of Option 1 and Option 2.

Figure 8.04 Example of Type C/Full Screening

Figure 8.05 Example of 6' Berm with Mature Landscaping
(B) Placement of Landscape Types.

<table>
<thead>
<tr>
<th>Zoning of Subject Property</th>
<th>Adjacent to Street</th>
<th>Zoning of Adjacent Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1 District, or Single-Family Residential Use (2)</td>
<td>R2</td>
<td>OB</td>
</tr>
<tr>
<td>R2</td>
<td>A</td>
<td>B</td>
</tr>
<tr>
<td>OB</td>
<td>A</td>
<td>A</td>
</tr>
<tr>
<td>C</td>
<td>A</td>
<td>C</td>
</tr>
<tr>
<td>I</td>
<td>A</td>
<td>C</td>
</tr>
</tbody>
</table>

(1) Apply this column in all instances, then
(2) Apply this column before following 4 columns
Section 8.04 Building Foundation Landscaping.

(A) Foundation landscaping shall be applicable to any elevation of a new building or building addition which:

(1) Has a street-facing façade; or

(2) includes the primary customer entrance.

(B) Relationship to Buildings. Foundation landscaping shall be located along or adjacent to each applicable building elevation, provided, however, where a portion of the building elevation is devoted to pedestrian ingress/egress, vehicular ingress/egress, loading or drop-off zones, foundation landscaping areas may be aggregated into one or more locations along or abutting such building elevation. In order to allow for a walkway or similar improvements adjacent to the building, foundation landscaping may begin within fifteen (15) feet of the building.

(C) Foundation landscaping areas shall maintain a minimum dimension of four (4) feet in the smallest dimension, with a minimum of sixteen (16) square feet of foundation landscaping area provided for each tree and for every two hedge plants or shrubs.

(D) Foundation landscaping shall be provided at a rate of:

(1) one (1) deciduous tree for every twenty-five (25) feet (rounded up to the nearest whole number) of width of the applicable elevation; and,

(2) one (1) hedge plant or shrub, every three (3) feet of width of the applicable elevation.

Section 8.05 Off-Street Parking Islands.
(A) Off-street parking areas shall include areas used for the parking or display of automobiles, boats, truck or farm equipment associated with a dealership or leasing business.

(B) Off-street parking areas shall not include areas used for semi-truck loading areas, semi-truck maneuvering areas and semi-truck parking areas.

(C) All new, off-street parking areas containing ten (10) parking spaces or more and all expanded surface off-street parking areas which are increased by five (5) parking spaces or more, whether such increase occurs at one (1) time or in successive stages, shall provide interior off-street parking island landscaping.

(D) All such off-street parking areas shall include at least one (1) required interior landscape island for every ten (10) parking spaces (or fraction thereof).

(E) Each required interior landscape island shall measure a minimum of eight (8) feet by eighteen (18) feet.

(F) Each required interior landscape island shall contain a minimum of one (1) of the following: deciduous shade tree, deciduous ornamental tree, or evergreen tree.

(G) Interior landscape islands, generally, shall be located at the end of parking bays so as to define vehicular and pedestrian traffic patterns.

(H) The area devoted to interior landscape islands shall be in addition to any required perimeter yard landscaping, foundation landscaping or parking area screening required by this Chapter.

Figure 8.07 Example of Interior Off-Street Parking Area Landscaping
Section 8.06 Off-Street Parking Screening.

(A) Perimeter screening of off-street parking areas shall apply to all new, off-street parking areas and expanded off-street parking areas for any use, except for single family and two family dwellings.

(B) In addition to the required Perimeter Yard Landscaping, an off-street parking area located between a building line and a front lot line, or adjacent to a residential use, the edge of the parking area facing such front lot line or residential use shall be screened by a compact row of shrubs/hedge plants planted three (3) feet on-center across the front of the parking area located between such front lot line or residential use and the edge of the parking area. Minimum planting size shall meet the requirements for Hedge Plants/Shrubs of Table 8.02 Minimum Size at Time of Planting, and be maintained at a maximum allowable growth height of thirty-six (36) inches.
Chapter 8
Landscape Regulations

Section 8.07 Minimum Plant Sizes.

All plant materials specified by this Section shall comply with the minimum sizes at time of planting as specified in Table 8.02 Minimum Size at Time of Planting, below.

<table>
<thead>
<tr>
<th>Plant Category</th>
<th>Minimum Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deciduous Shade Tree (a.k.a. Overstory Tree)</td>
<td>2 ½ inch caliper at 6&quot; above the ground</td>
</tr>
<tr>
<td>Deciduous Ornamental Tree (a.k.a. Understory Tree)</td>
<td>1 ½ inch caliper at 6&quot; above the ground</td>
</tr>
<tr>
<td>Evergreen Tree</td>
<td>6' high</td>
</tr>
<tr>
<td>Hedge Plants / Shrubs</td>
<td>24&quot; high</td>
</tr>
</tbody>
</table>

Section 8.08 Installation and Maintenance of Landscaping.

(A) Installation. All landscaping required by this Chapter shall be installed prior to the issuance of a final certificate of occupancy for the use on the real estate. If seasons, weather conditions or other conditions beyond the applicant’s control create a situation which is not appropriate for the installation of landscaping immediately prior to the issuance of a final certificate of occupancy, the Zoning Administrator may issue a temporary certificate of occupancy pending the installation of landscaping required by this Chapter not later than three (3) months after the start of the next planting season after the use of the real estate is commenced. The start of planting seasons shall be March 15 and August 15 of each year.

(B) Maintenance. The owner shall be responsible for the replacement of any required planting, which is removed or dies after the date of planting. Such replacement shall occur within three (3) months after the start of the next planting season.
CHAPTER 9
LIGHTING REGULATIONS

Section 9.01 Intent.

The Lighting Regulations contained in this Chapter are intended to provide for the erection, design, or placement of outdoor light fixtures which provide for illumination levels on individual lots which are adequate for the safe and efficient movement of individuals or vehicles to and from a lot and within a lot (i.e., areas that are dangerous if unlit, such as stairs, intersections or changes in grade). Lighting regulations are designed to protect against the spillover of light onto abutting properties which may negatively impact occupants of abutting properties, and are designed to protect against objectionable glare onto public rights-of-way which may impair the vision of motorists.

Section 9.02 General Requirements.

All outdoor light fixtures on a lot shall comply with the following regulations:

(A) Applicability. The Lighting Regulations contained in this Chapter, unless specifically stated otherwise, are applicable only to Office/Buffer, Commercial, Industrial, Planned Unit Development, or special exception use districts contained in this Ordinance.

(B) Minimum Setback. Notwithstanding anything in this Ordinance to the contrary for the "Use of Minimum Yards" for any district, a freestanding outdoor light fixture may be located within a required front, side or rear yard, provided that the freestanding outdoor light fixture is located adjacent to the interior edge of such yard and adjacent to a permitted driveway, parking area, interior access drive, interior access driveway, or other outdoor use area requiring illumination.

(C) Lighting Standards. Outdoor light fixtures shall comply with the standards set forth in Table 9.01 Lighting Standards.

(D) Mounting of Fixtures (except in Industrial Districts). Full cutoff, cutoff and semi-cutoff outdoor light fixtures shall be mounted parallel to the ground and shall utilize a rigid mounting arm with no built-in uptilt and no adjustment feature.

(E) Height of Fixtures. All outdoor light fixtures used to illuminate a particular area on a lot (i.e., a parking area; a loading area; or, an entry way, sidewalk or walkway areas) shall, within those areas, be of uniform size, design and height.
TABLE 9.01
LIGHTING STANDARDS

<table>
<thead>
<tr>
<th>District</th>
<th>Type of Fixture</th>
<th>Maximum Combined Height of Pole and Base</th>
<th>Maximum Wattage</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Districts</td>
<td>Non cutoff&lt;sup&gt;(1)&lt;/sup&gt;</td>
<td>20'</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Semi cutoff</td>
<td>30'</td>
<td>400</td>
</tr>
<tr>
<td></td>
<td>Cutoff</td>
<td>35'</td>
<td>400</td>
</tr>
<tr>
<td></td>
<td>Full cutoff</td>
<td>40'</td>
<td>1,000</td>
</tr>
</tbody>
</table>

<sup>(1)</sup> Non-cutoff outdoor light fixtures shall be limited to locations along walkways, driveways, interior access drives, interior access driveways and outdoor seating areas.
(F) Power Supply. Outdoor light fixtures located on light poles shall be provided power by underground wiring.

(G) Wall Pack Lights. Wall pack outdoor light fixtures shall be subject to the following regulations:

1. Except in the Industrial District, wall pack outdoor light fixtures located on a front or side elevations of a building or structure shall be full cutoff.

2. In all Office/Buffer, Commercial or Industrial Districts. Wall pack outdoor light fixtures oriented toward a residential use and an abutting residential district shall be full cutoff.

3. Low intensity (i.e., 100 watts or less), architectural style wall pack outdoor light fixtures (which may be cutoff, semi cutoff or non cutoff) may be used to accent architectural elements of the building or structure or to illuminate entrance areas.

(H) Vehicular Canopy Light Fixtures. Outdoor light fixtures located under a vehicular canopy of drive through structures (e.g., gasoline service station canopies, bank drive through canopies, etc.) shall be full cutoff fixtures with a maximum intensity of four hundred (400) watts.

(I) Awning and Canopy Lighting. Awnings and canopies used for building accents over doors, windows, walkways, and the like, may be internally illuminated or back-lit (i.e., lit from underneath or behind) provided, however, that the primary material is opaque and that translucent material is limited to the actual text or logo of the sign, if any, incorporated into the awning or canopy.

(J) Glare on Public Right-of-Way. Flag and statue lights, architectural lights, floodlights, or sign lighting shall be so directed and shielded that the light element is not visible from any point along an adjacent public right-of-way.

(K) Floodlights. Outdoor light fixtures equipped with floodlights may only be permitted on a lot as follows:

1. Floodlights shall be focussed on the primary building or the area of the lot located between the floodlight and the primary building; or,

2. Floodlights shall be shielded to the extent that the main beam from the luminaire is not visible from or causes any glare onto adjacent properties or rights-of-way.
Chapter 9
Lighting Regulations

(L) Lighting Plans. The following information, at a minimum, shall be provided for all lighting plans submitted in connection with an application for an improvement location permit:

(1) A site plan which includes the outline of buildings, structures and other improvements (e.g., parking areas, loading areas, interior access drives, etc.) on the lot and the location of all outdoor light fixtures.

(2) A description of the outdoor light fixtures, including but not limited to manufacturers or electric utility catalog specifications sheets, drawings or photometric report, which indicate:

   (a) the outdoor light fixture classification (e.g., cutoff, semi-cutoff, full cutoff, or non-cutoff);

   (b) mounting height of freestanding outdoor light fixtures; and,

   (c) wattage proposed for each outdoor light fixture.

Section 9.03 Special Regulations for Sport and Athletic Field Lights.

Notwithstanding anything in this Section to the contrary, freestanding sport and athletic field lights and fixtures shall not exceed one-hundred and ten (110) feet in height above grade, and shall be of a type and manufacturer that offers a spill and glare control package, and fitted with the manufacturer’s spill and glare control package.

Section 9.04 Exempt Lights.

(A) Holiday Decorations. Outdoor light fixtures used for holiday decorations.

(B) Public Lighting. All outdoor light fixtures originating from public areas and ways, including but not limited to parks, rights-of-way, public art or other public facilities, that are installed for the benefit of the public health, safety and welfare.

(C) Fossil Fuel Lights. All outdoor light fixtures producing light directly from the combustion of fossil fuels (i.e., kerosene lanterns or gas lamps).

(D) Construction / Emergency Lighting. All outdoor light fixtures provided in connection with construction work or the abatement of an emergency situation necessitating said lighting, provided that the use of such outdoor light fixtures are discontinued during hours when construction activity or emergency abatement is not in progress and that such outdoor light fixtures are removed upon completion of the construction activity or the abatement of the emergency.
(E) Single Family Dwelling or Two Family Dwelling Lots. All outdoor light fixtures used for the illumination of personal property, provided, however, that such outdoor light fixtures shall be subject to sub-Section 1.26 Environmental Performance Standards regarding glare.

Section 9.05 Temporary Lights.

(A) The following types of temporary outdoor light fixtures may be approved on a temporary basis by the Zoning Administrator prior to placement or use.

(1) Civic Events. Temporary outdoor light fixtures used for civic events.

(2) Special Events. Temporary outdoor lighting fixtures for such activities as circuses, fairs, carnivals, sporting events, and the like.

(B) Such temporary lights shall not be installed more than thirty (30) days prior to the civic event or special event and shall be removed not more than fifteen (15) days after the civic event or special event.

(C) Searchlights. Notwithstanding anything contained in sub-Section 9.06 Prohibited Lights, below, to the contrary, temporary outdoor light fixtures used in connection with a civic event or special event may include one (1) portable, rotating searchlight provided, however, that such temporary outdoor light fixture:

(1) Shall not be permitted for more than three (3) occurrences during a calendar year;

(2) Shall not be used for a period of more than two (2) consecutive days during a civic event or special event;

(3) Shall not be operated between the hours of 12:00 midnight and 8:00 a.m.; and,

(4) Shall otherwise comply with all other applicable provisions of this Section.
Section 9.06  Prohibited Lights.

(A)  Flashing Lights. Any lights that flash, move, revolve, rotate, scintillate, blink, flicker, vary in intensity or color, or use intermittent electrical pulsation.

(B)  Floodlights. Floodlights not in compliance with the regulations set forth above, or other form of outdoor light fixtures not specifically authorized by this Section (including but not limited to stringer lights), that are ground mounted or attached to light poles, and used to illuminate the site, buildings or structures.

(C)  Outdoor Strings of Lights. Outdoor strings of lights, including but not limited to those used to outline lot lines or outdoor display areas, provided, however, outdoor strings of lights may be allowed when complying with sub-Section 9.04 (A) Holiday Decorations, above.
CHAPTER 10
SIGN REGULATIONS

Section 10.01 Intent.

Signs are an essential element in the promotion and identity of a business or use on a site, or within a project area. Signs impact the public health, safety, comfort, general welfare and the quality of life of the Town. These Sign Regulations are intended to: encourage the effective use of signs as a means of communication; encourage signs which, by their design, are integrated with and harmonious to the buildings and sites which they occupy; eliminate excessive and confusing sign displays; maintain and improve the appearance of the Town as an attractive place in which to live and conduct business; safeguard and enhance property values by minimizing the possible adverse effects of signs on nearby properties; protect public and private investment in buildings and open spaces; eliminate potential hazards to motorists and pedestrians resulting from signs.

Section 10.02 General Provisions.

(A) Applicability.

The requirements of this Ordinance apply to all signs, sign structures, awnings, and other types of sign devices located within the Town, and shall be required to obtain an improvement location permit prior to their erection unless otherwise exempt under Section 10.06 Exempt Signs, below.

(B) Maintenance of Signs.

Nothing contained in this Ordinance shall be construed to prevent the maintenance, repainting or posting of legally established signs. Maintenance shall include the replacement of sign surfaces within a sign structure provided that the sign structure is not removed or changed in any dimension. All signs shall be maintained in good repair (e.g., without peeling paint or broken sign faces) and in operable condition (e.g., if internally illuminated, all light bulbs or tubes shall be operational) at all times. The Town may order the removal of any sign which becomes a public hazard due to lack of maintenance and repair.

(C) Compliance with Other Codes.

All signs shall be constructed, connected, operated and maintained according to the specifications of the building and electrical codes of the Town.
Chapter 10
Sign Regulations

(D) Illuminated Signs.

Lighting directed towards a *sign* shall be shielded so that it illuminates only the *sign surface* and does not shine on, cause glare to or otherwise impair the vision of the driver of any motor vehicle traveling on a *public right-of-way*.

(E) Clear Sight Areas.

*No sign* shall interfere with the clear sight area specified in Section 1.20 Clear Sight Area Requirements.

Section 10.03 Types of Signs.

(A) Freestanding Signs.

(1) *Freestanding signs* may include, but are not limited to: pylon, pole, pole with cladding, multi-panel, monument, or canopy *signs*.

(2) *Freestanding signs* and *sign structures* are hereby declared to be *accessory structures*. As *accessory structures*, *freestanding signs* and *sign structures* may not occupy a *lot* without a primary *use* or *building* also being legally located on the *lot*, unless in compliance with the regulations of this ordinance for *temporary signs* or *off-premise signs*.

(3) Maximum *sign surface* shall apply individually to each *street* frontage.

(B) Building Signs.

(1) *Building signs* may include, but are not limited to, wall, fascia, window, awning, canopy, or *projecting signs*.

(2) There shall be no limit to the number of *building signs* per facade, provided that the total *sign surface* area of all *building signs* located on each *building* facade shall not exceed the maximum *sign surface* area for the *building* facade upon which such *signs* are located.

(3) The bottom edge of the awning, canopy, or marquee shall not be less than eight foot six inches (8’– 6”) above *grade* over a walkway or fifteen (15) feet above *grade* over a *driveway*, interior access drive or alley.
Section 10.04 Calculation of Sign Surface Area.

(A) Multi-faced Signs.

The sign surface area for a sign with more than one (1) sign face shall be computed by adding together the sign surface area of all sign faces visible from any one point. When two (2) sign faces are placed back to back, or at no greater than fifteen (15) degrees from one another, so that both faces cannot be viewed from any point at the same time, the sign surface area shall be computed by the measurement of one (1) of the sign faces. In addition, except for off-premise signs, such sign faces that are part of the same sign structure shall not be more than forty-two (42) inches apart.

(B) Sign Surface Area Determinations.

(1) When calculating the sign surface area of any sign, a maximum of three (3) distinct and abutting "Areas" made up of circles, ovals, squares or rectangles may be used to encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed.
(2) In the case of freestanding signs with a base, pole cover, or decorative embellishments, the portion of the structure not containing any advertising and not an integral part of the display area shall not be included in the overall calculation of sign surface area.
(C) Façade Area Calculations for Building Signs. When calculating the area of a façade upon which a building sign may be placed, the following regulations shall be followed to determine the area of the façade:

1. **Square or Rectangular Shaped Façade.** The area of the façade of the building or tenant space shall be the length of the building or tenant space times the height of the building or tenant space.

2. **Irregular Shaped Façade.**
   
   The area of the façade shall be the actual surface area of the façade of the building or tenant space above grade and beneath the top of the wall.

3. **Buildings With Irregular Footprints.**
Chapter 10
Sign Regulations

The area of the façade shall be determined by the smallest two dimensional area, pursuant to the above regulations, from which the façade, or portion thereof, may be viewed.

(D) Signs on Ornamental, Decorative Fence or Masonry Wall.

The *sign surface* area of a *sign face* located on an ornamental, decorative fence or masonry wall shall be limited to the area of the *sign face* only if the fence or wall has a length of not less than three (3) times the width of the *sign* or message element. If a fence or wall is less than three (3) times the width of the *sign* or message element, the fence or wall shall be deemed to be part of the background of the display used to differentiate the *sign* from the backdrop and the entire area of the fence or wall shall be considered part of the *sign surface* area.

Section 10.05 Changeable Copy Signs.

(A) A *changeable copy sign* may be used as part of either a *freestanding sign* or as part of a *wall sign*, but not both.

(B) *Electronic Message Centers* (EMC) shall comply with the following regulations:

1. All EMC *signs* shall have automatic dimming controls, either by photocell or via software settings, in order to bring EMC lighting level at night into compliance with this Chapter;

2. *Signs* that are illuminated at night may not exceed a maximum luminance level of seven hundred fifty (750) Nits, regardless of the method of illumination. All illuminated *signs* must comply with the luminance level at least one-half hour before Apparent Sunset, as determined by the National Oceanic and Atmospheric Administration (NOAA). At Apparent Sunrise, as determined by NOAA, *signs* may resume luminance levels appropriate for daylight conditions;
Chapter 10
Sign Regulations

(3) For non-residential uses in the R1 Residential District, R2 Residential District, and OB Office/Buffer District, EMC’s are allowed, by special exception use only. They are prohibited on residential properties or multi-family dwellings;

(4) All messages shall be displayed for a minimum of four (4) seconds with a maximum transition time between messages and/or message frames of one and a half (1.5) seconds;

(5) Continuous scrolling and/or traveling, flashing, spinning, rotating, and similar moving effects, and all dynamic frame effects or patterns of illusionary movement or simulating movement are prohibited; and

(6) Full motion video or film display via an electronic file imported into the EMC software or streamed in real time into the EMC is prohibited.

Section 10.06 Exempt Signs.

Unless otherwise specifically stated, signs that comply with the provisions contained in this Section 10.06 Exempt Signs shall be exempt from all other provisions of this Ordinance, except that the provisions specified in Section 1.20 Clear Sight Area Requirements shall apply.

(A) Signs which are not visible from a public roadway, provided however, that these signs are non-illuminated and comply with all other provisions of this Ordinance, including but not limited to any required setbacks, maximum sign area, and maximum sign height.

(B) Flags. Up to four (4) flags having a maximum combined area not to exceed 96 square foot and so long as all flag poles are permanently anchored or attached to the principal building or accessory structure.

(C) Integral, decorative, or architectural features of buildings, so long as such features or works do not contain logos, letters, or trademarks, excepted as noted in sub-Section (E) (4), below.

(D) Interior Signs. Signs located entirely within the interior of a building and not viewable or intended to be viewable from the public right-of-way.

(E) Miscellaneous signs, including but not limited to:

   (1) Non-illuminated signs not exceeding two (2) square feet in sign surface area limited to property identification signs giving names or numbers of occupants or signs posted on private property only to identify or warn about "Private Property", "Private Parking", "No Trespassing" or "Danger" from animals;
(2) Non-illuminated signs not exceeding four (4) square feet in sign surface area indicating only the location of public telephones and restrooms, underground public utilities, or similar location signs;

(3) Signs which are architecturally integral to the building and only indicating the name of the building, date of erection, monumental citations, commemorative tablets and the like, when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type construction and made an integral part of the building; and

(4) Signs indicating hours of operation, open or closed or other information related to the operation of the business provided no single sign exceeds six (6) square feet.

(F) Official signs, including but not limited to:

(1) Government mandated Signs such as street address numerals, public hearing signs and other signs or exterior displays required to be maintained by government order or regulations, provided that the content and size thereof does not exceed that required by such order or ordinance;

(2) Official signs authorized by a government or governmental unit which give traffic, directional, or warning information; signs of public service companies indicating danger; and, signs erected by, or on the order of, a public officer in the performance of their public duty which aide service or safety; and

(3) Public signs and public notices erected by governmental authority under any law, statute, or ordinance.

(G) Holiday Displays. Displays which contain no commercial message, are primarily decorative in nature, and are clearly incidental and commonly associated with any national or religious holiday, and which are erected not more than thirty (30) days prior to the start of the holiday and removed no more than fifteen (15) days after the holiday.

(H) Tombstones.

(I) Works of Art. Three (3) dimensional works of art (statuary, sculptures), and two (2) dimensional works of art (i.e. murals) that are artistic in nature and which do not contain text or logos that promote on-site activities or commercial interests, provided, however two (2) dimensional works of art which exceed five (5) percent of the side or rear facade of a building on which they are placed shall receive approval as a wall sign.

Section 10.07 Prohibited Signs.
The following *signs* shall be prohibited in all *districts*:

(A) *Signs* located on, in or above the right-of-way of any street or alley, except for official *signs*, *signs* erected on behalf of or pursuant to authorization of a governmental body, or *projecting signs* as expressly permitted by later sub-Sections of Chapter 10 Sign Regulations.

(B) *Signs* which interfere with street intersections. No *sign*, permanent or *temporary*, shall be erected so that it interferes with the sight distance as specified in Section 1.20 Clear Sight Area Requirements of this Ordinance.

(C) *Signs* which interfere with, obstruct the view of, imitate, copy, purport to be, or may be confused with any authorized official *sign*, traffic *sign*, traffic signal, or traffic control device.

(D) *Portable signs*, including but not limited to: (i) *A-frame*, *T-frame*, menu board, and sandwich board *signs* (except as expressly authorized by sub-Section 10.06 (E), above, of this Chapter); (ii) *signs* on portable trailer frames; and, (iii) *signs* attached to or painted on a vehicle parked and visible from the *public right-of-way*, provided, however, a vehicle which is used in the normal day-to-day operation of a business *use* shall not be considered a *portable sign* if the vehicle is parked beside or behind the *building* in which the *use* is located, or if the *sign* on the vehicle contains less than nine (9) square feet in *sign surface* area.

(E) Windblown devices, including but not limited to any *banner*, pennant, spinner, streamer, propeller, disc, moored blimp, balloon, feather *banner*, or flag that is designed to inform or attract attention (except for exempt flags as set forth in sub-Section 10.06 (B) above).

(F) *Signs* attached to trees.

(G) *Signs* attached to utility poles, except for *signs* erected on behalf of or pursuant to authorization of a governmental body or the utility company having jurisdiction over such poles.

(H) *Signs* that bear or contain statements, words or pictures of an obscene, pornographic, immoral character, or which contain advertising matter which is untruthful or will offend public morals or decency.
Chapter 10
Sign Regulations

(I) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress to any building.

(J) Any rotating beam, beacon, intermittent light, lights of changing degrees of intensity, or flashing illumination in connection with any sign surface, except as part of an electronic message center sign on which the message does not remain constant for a minimum of 4 seconds.

(K) Roof signs.

(L) Any other type of sign located on private property outside of a public right-of-way not expressly permitted by Chapter 10 Sign Regulations of this Ordinance.

(M) All other signs not expressly permitted or regulated herein.

Section 10.08 Temporary Signs.

In addition to the type, number, sign surface area, setback and height regulations for signs specified for each district, temporary signs (i.e., signs typically related to: sale or lease, construction, grand openings, political campaigns, etc.) shall be allowed subject to the following regulations:

(A) General Regulations Applicable to All Temporary Signs.

(1) Time. Temporary Signs may be erected for one of the following time periods:

(a) Special Events. Temporary Signs may be erected, placed or located in connection with a special event not more than thirty (30) days prior to the start of a special event and shall be removed not more than fifteen (15) days after the end of the special event. A special event related sign shall not be erected, placed or located more than two (2) times during a calendar year; or,

(b) Non-Special Event. Temporary Signs not in connection with a special event may be erected, placed or located not more than two (2) times during a calendar year and shall not exceed forty-five (45) days in duration.

(2) Place. Temporary Signs shall comply with the following location requirements:

(a) A Temporary Sign shall comply with the regulations of Section 1.20 Clear Sight Area Requirements;

(b) A Temporary Sign shall not be located within any public right-of-way;
(c) A Temporary Sign, if a freestanding sign, shall be located in compliance with all setback regulations for a permanent sign; and

(d) A Temporary Sign, if a wall sign, shall be located in compliance with the regulations for a permanent wall sign.

(3) Manner. Temporary Signs shall be placed in the following manner:

(a) A Temporary Sign shall be permitted on a lot only upon prior authorization by the owner of said lot;

(b) Any sign which meets the Ordinance definition of an on-premise business sign or an outdoor advertising sign shall not be considered or allowed as a Temporary Sign; and

(c) A Temporary Sign shall not be illuminated.

(B) Temporary Sign for any individual lot in any R1 District, R2 District, or OB District:

(1) Number. One (1) temporary sign shall be permitted for each street or limited access highway which abuts the lot or integrated center.

(2) Manner. Temporary Signs:

(a) shall not exceed six (6) square feet in sign surface area; and

(b) shall not exceed four (4) feet in height above grade.

(C) Temporary Sign for any individual lot in any C District or I District:

(1) Number. One (1) temporary sign shall be permitted for each street or limited access highway which abuts the lot or integrated center.

(2) Manner. Temporary signs:

(a) shall not exceed thirty-two (32) square feet in sign surface area; and

(b) shall not exceed eight (8) feet in height above grade.

(D) Time and Manner Regulations for A-frame, T-Frame, Menu board or Sandwich Board Signs.

Notwithstanding anything above to the contrary, Temporary Signs which are A-frame, T-frame, menu board or sandwich board signs, shall be subject to the following time and manner regulations:
Chapter 10
Sign Regulations

(1) Time.

(a) May be erected, placed or located outside of a business establishment on a daily basis; and

(b) Shall only be displayed during business hours.

(2) Manner.

(a) Shall be within ten (10) feet of the main customer entrance to the business establishment and shall not be located in any public right-of-way;

(b) Shall not exceed six (6) square feet in sign surface area; and

(c) Shall not exceed a maximum height of four (4) feet above grade.
Section 10.09 On-Premise Signs Regulations

(A) Development Standards for On-Premise Signs.

<table>
<thead>
<tr>
<th>Table 10.01 Development Standards On-Premise Signs</th>
</tr>
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<tbody>
<tr>
<td>Subdivision Identification Signs</td>
</tr>
<tr>
<td>Freestanding Signs</td>
</tr>
<tr>
<td>Number</td>
</tr>
<tr>
<td>Height</td>
</tr>
<tr>
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</tr>
<tr>
<td>Maximum Area</td>
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<tr>
<td>Side/Rear Façade</td>
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<tr>
<td>Directional Signs</td>
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<tr>
<td>Number</td>
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<tr>
<td>Height</td>
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</tbody>
</table>

¹The linear measurement of a building sign shall not exceed eighty percent (80%) of the linear width of the façade of the structure or tenant space on which the sign is located.
(B) Development Regulations for Specified *On-Premise Signs.*

(1) Subdivision Identification Signs for Recorded, Platted Residential Subdivisions.

   (a) The *signs* shall be constructed of ornamental metal, stone masonry, or other permanent material;

   (b) The *signs* shall indicate on the name of the subdivision; and

   (c) The *signs* shall not be internally illuminated.

(2) Directional Signs.

   (a) One freestanding directional *sign* shall be permitted for each *driveway* or entrance on to the property, plus one at each critical turn within the *lot* subject to the size and height limitations found in Table 10.01 Development Standards *On-Premise Signs.*

   (b) If a *lot* is occupied by a *use* which includes a drive-through facility, one (1) *menu board* shall be permitted at each drive through lane to announce the selection of services or products available at the drive-through facility and the prices thereof. Such *signs* shall not exceed 48 square feet.

   (c) Directional *signs* located in the R1, R2, or OB Districts shall not be internally illuminated.

(3) Gasoline Service Station Signs.

*Signs* may be located on a gasoline island canopy, gasoline island spandrels, pump islands or dispensers and shall be considered as and regulated as *building wall signs* subject to the following exceptions:

   (a) Such *signs* located on a gasoline island canopy, gasoline island spandrels, gasoline pump islands or gasoline dispensers shall not exceed:

      1. fifty (50) percent of the surface area of the facade of the canopy; or,

      2. fifty (50) percent of the façade of the gasoline dispensers, spandrel or pump island upon which such *sign* is located.
(b) Such signs may be located on either a gasoline island spandrel or a gasoline pump island, but not both.

Section 10.10 Off Premise Sign Regulations.

(A) Districts Allowed.

Off-premise signs shall only be permitted in the C Commercial District and I Industrial District established under this Ordinance.

(B) Sign Surface Area for Off-premise Signs.

(1) Arterial Streets. The maximum sign surface area for off-premise signs oriented toward an arterial street shall be six-hundred and seventy-two (672) square feet.

(2) All Other Streets. The maximum sign surface area for off-premise signs oriented toward any street not classified as an arterial street shall be three hundred (300) square feet.

(3) Temporary Extensions. Temporary extensions or embellishments integrally incorporated into the sign surface and having: a vertical height of no more than four (4) feet above the top of the main portion of the sign; a maximum horizontal dimension of no more than one (1) foot beyond the sides of the main portion of the sign; or, a maximum vertical dimension of no more than one (1) foot below the bottom of the main portion of the sign, with a maximum combined area not to exceed
two-hundred square feet in additional sign surface area may be added to a six-hundred and seventy-two (672) square foot off-premise sign.

(4) Concealment of Sign Supports. The backs of off-premise signs shall be either: concealed by another sign surface; screened by suitable architectural treatment; or, painted to blend with the surrounding (and maintained as such), so that the supports, tie rods, bracing or framework which supports the sign surface are screened from view.

(C) Distance Between Off-Premise Signs.

(1) Linear Spacing for All Streets. The minimum separation between off-premise signs located along and oriented toward the same street shall be seven-hundred and fifty (750) feet.

(2) Measurement of Linear Spacing. The method of measurement of the spacing between off-premise signs oriented toward the same street shall be along the centerline of the street to which the off-premise sign is oriented, from the point in the centerline closest to the leading edge of the off-premise sign.

(3) Radial Spacing. In no event shall an off-premise sign be located closer than three hundred (300) feet from any other off-premise sign regardless of location or orientation.

(D) Maximum Height of Off-premise Signs.

The maximum height of an off-premise pole sign shall not exceed thirty-five (35) feet above grade.


(1) Front Yard Setback. The minimum front yard setback shall be the same as required for any building or structure.

(2) Side Yard Setback and Rear Yard Setback. The minimum side yard setback or minimum rear yard setback for an off-premise sign shall be the same as required for any building or structure.

(F) Separation from Certain Districts or Uses.

(1) Linear Spacing. The minimum distance between an off-premise sign and a residential district, historic preservation district, public park – active or passive, residential use, religious use, private or parochial school, designated historic landmark or river shall
be two-hundred (200) feet, measured along the centerline of the street to which the off-premise sign is oriented, from the point in the centerline closest to the leading edge of the off-premise sign to the point in the centerline nearest district boundary or lot line of a use specified herein.

(2) Radial Spacing. The minimum distance between an off-premise sign and a residential district, historic preservation district, public park – active or passive, residential use, religious use, private or parochial school, designated historic landmark or river shall be one-hundred (100) feet, measured perpendicular from the nearest edge of the sign surface to the nearest district boundary or lot line of a use specified herein.

(G) Construction of Off-Premise Signs.

The supports, uprights, bracing and framework of an off-premise sign shall be of steel construction.

(H) Separations and Jurisdictional Boundaries.

The lineal and radial separation distances contained in Section (F), above, shall not be limited by jurisdictional boundaries. Required separation distances for proposed off-premise signs located within the corporate limits of the Town shall also be maintained from off-premise signs located in adjacent municipalities or jurisdictional areas.
CHAPTER 11
OFF- STREET PARKING and LOADING REGULATIONS

Section 11.01 Intent.

These Off- Street Parking and Loading Regulations are intended to provide for the provision of off- street parking and loading areas which are adequate to support the needs of proposed uses and future uses of a site, while at the same time assuring that the design and construction of such off- street parking and loading areas meet minimum design standards necessary to promote efficient circulation and prevent undue traffic congestion on and to the public right- of- way.

Section 11.02 Applicability.

All new development, additions to buildings or structures, or conversions of use for which an improvement location permit is required by this Ordinance in any district shall provide required off- street parking areas in accordance with the regulations of this Article. Such off- street parking areas may be provided in either a surface parking area or a parking garage. If off- street parking areas are provided in a parking garage, such parking garage shall be located in compliance with the development standards of the applicable district of this Ordinance regarding minimum setbacks and the landscaping requirements of Chapter 8 Landscape Regulations.

Section 11.03 Existing Off-Parking Areas.

Existing off- street parking areas shall not be reduced below the minimum requirement for such use as required by this Ordinance. Any off- street parking areas existing prior to the effective date of this Ordinance which were already below the standards established by this Ordinance shall not be further reduced.

Section 11.04 Location of Off-Parking Areas.

Off- street parking areas shall be located:

(A) On the same lot as the building, structure or use served by the off- street parking area; or

(B) Within the same integrated center, business park, or industrial park as the building, structure or use served by the off- street parking area; or

(C) Within five hundred (500) feet, of the building, structure or use served by the off- street parking area, provided that such off- site location for the off- street parking area is approved by the Council as a Special Exception Use where:
Chapter 11
Off-Street Parking and Loading Regulations

1. Within a *district* which permits the *use* for which the *off-street parking* is provided; and,

2. A written agreement, properly drawn and executed by the parties concerned, approved as to form by the Town Attorney, and recorded in the Office of Recorder for St. Joseph County assuring the availability of the *off-street parking area* is filed with the *Board of Zoning Appeals* as part of the request for approval of the *Special Exception Use*.

Section 11.05 Design and Construction of Off-Street Parking Areas.

The design and construction of all required *off-street parking areas* shall be in compliance with the stricter of the regulations contained in this Section, or the minimum specifications prescribed by the *Town*.

(A) Design of Off-Street Parking Areas.

(1) Layout. The layout of all *off-street parking areas* shall be in compliance with one (1) of the Options set forth below:

(a) Option 1: in the Architectural Graphic Standards, Tenth Edition, or most current edition, for a Level of Service "A" or "B"; or,

(b) Option 2: in TABLE 11.01 - Parking Lot Design, below:

<table>
<thead>
<tr>
<th>Angle of Parking Space</th>
<th>Minimum Width of Parking Space</th>
<th>Minimum Depth of Parking Space</th>
<th>Minimum Width of Maneuvering Aisle</th>
</tr>
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<tbody>
<tr>
<td>61° - 90°</td>
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<td>45°</td>
<td>8'-6&quot;</td>
<td>18'-0&quot;</td>
<td>15'-0&quot; (one way)</td>
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<tr>
<td>Parallel</td>
<td>8'-0&quot;</td>
<td>22'-0&quot;</td>
<td>12'-0&quot; (one way)</td>
</tr>
</tbody>
</table>
Chapter 11
Off-Street Parking and Loading Regulations

Example of Parallel Parking Regulations

Example of Parking Lot Design Regulations
Chapter 11
Off-Street Parking and Loading Regulations

2. Landscaping. Except for individual single family dwellings or two family dwellings, the layout of all off-street parking areas shall comply with the design related regulations contained in Section 8.05 through Section 8.08 Landscaping Regulations, of this Ordinance.

3. Definition of Off-Street Parking Spaces. Except individual single family dwellings or two family dwellings, all off-street parking spaces shall be:

   (a) Identified by painted lines, a minimum four (4) inches in width, raised curbs or other means to indicated individual spaces; and,

   (b) Provided with raised curbs, wheel stops or other devices to insure that motor vehicles do not encroach beyond the off-street parking area, or into a required yard.

(B) Surface of Off-Street Parking Areas.

   (1) All required off-street parking areas and any driveway, interior access driveway or interior access drive to and from such off-street parking areas shall be hard surfaced with asphalt, concrete, pervious concrete or other material to provide a durable, dust-free surface, which meets or exceeds the minimum specifications prescribed by the Town.

   (2) A temporary or seasonal use permitted by the district in which such temporary or seasonal use is located may use an unimproved or gravel surface for the duration of the temporary or seasonal use. If a temporary gravel surface is provided, such gravel shall be removed and the off-street parking area shall be returned to its prior condition immediately upon cessation of the temporary or seasonal use.

Section 11.06 Minimum Number of Required Off-Street Parking Spaces.

(A) Off-street parking for all uses shall be provided in accordance with the minimum requirements set forth in TABLE 11.02 - Required Off-Street Parking, below. When the computation of required off-street parking spaces results in a fraction of one-half (1/2) or greater, the number of required off-street parking spaces shall be rounded up to the next whole number:
### TABLE 11.02
Required Off-Street Parking

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art Galleries, Libraries, Museums</td>
<td>One (1) parking space per every three-hundred (300) square feet of gross floor area, plus one (1) parking space per employee</td>
</tr>
<tr>
<td>Assembly facilities with fixed seats, such as religious use, stadium, theater</td>
<td>One (1) parking space per every five (5) seats, plus one (1) parking space per each employee</td>
</tr>
<tr>
<td>Assembly facilities without fixed seats, such as banquet hall, Lodge, religious use, union hall</td>
<td>One (1) parking space per every twenty-five (25) square feet of floor area in public use</td>
</tr>
<tr>
<td>Assisted Living Facility</td>
<td>One (1) parking space per every three (3) units, plus one (1) parking space per employee</td>
</tr>
<tr>
<td>Auto Repair</td>
<td>Three (3) parking spaces per service bay, (a service bay shall not be considered a parking space), plus one (1) parking space per employee</td>
</tr>
<tr>
<td>Auto Sales</td>
<td>One (1) parking space per three-hundred (300) square feet of sales floor area in excess of one-thousand (1000) square feet, plus one (1) parking space per two-thousand (2000) square feet of open area</td>
</tr>
<tr>
<td>Bank</td>
<td>One (1) parking space per two-hundred (200) square feet of gross floor area</td>
</tr>
<tr>
<td>Bar, Tavern, Cabaret</td>
<td>One (1) parking space per every three (3) persons based upon the maximum number of persons that can be accommodated in accordance with design capacity</td>
</tr>
<tr>
<td>Barber, Hair &amp; Nail Salon, Tanning Salon</td>
<td>Three (3) parking spaces per each customer seat or service station.</td>
</tr>
<tr>
<td><em>Bed &amp; Breakfast</em></td>
<td>One (1) parking space per guest room, plus one (1) parking space for owner or manager</td>
</tr>
<tr>
<td><em>Child Care Center, Child Care Home, Child Caring Institution, Child Care Ministry</em></td>
<td>One (1) parking space per employee, plus one (1) parking space per three (3) children at maximum enrollment</td>
</tr>
</tbody>
</table>
### Chapter 11
**Off-Street Parking and Loading Regulations**

<table>
<thead>
<tr>
<th><strong>Category</strong></th>
<th><strong>Regulation</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Dwelling, Accessory Living Quarters,</em> <em>Dwelling, Single Family,</em> <em>Dwelling Two Family</em></td>
<td>One (1) parking space per dwelling unit</td>
</tr>
<tr>
<td><em>Dwelling, Multi-Family</em></td>
<td>Two (2) parking spaces per dwelling unit</td>
</tr>
<tr>
<td><em>Fitness Centers</em></td>
<td>One (1) parking space per one-hundred (100) square feet of <em>gross floor area</em>, plus one (1) parking space per employee</td>
</tr>
<tr>
<td><em>Funeral Home</em></td>
<td>One (1) parking space per every fifty (50) square feet of <em>gross floor area</em> in service rooms</td>
</tr>
<tr>
<td><em>Group Home</em></td>
<td>One (1) parking space per dwelling unit</td>
</tr>
<tr>
<td><em>Group Residence</em></td>
<td>One (1) parking space per two (2) occupants, plus one (1) parking space per employee</td>
</tr>
<tr>
<td><em>Health Care: Clinics, Dentists, Emergency care</em></td>
<td>Three (3) parking spaces per exam room, plus one (1) parking space per employee</td>
</tr>
<tr>
<td><em>Hotel &amp; Motel</em></td>
<td>One (1) parking space per guest room, plus two (2) parking spaces at office or registration area</td>
</tr>
<tr>
<td><em>Manufacturing/Industrial, Assembly of previously manufactured materials</em></td>
<td>One (1) parking space per employee</td>
</tr>
<tr>
<td><em>Manufacturing Retailer</em></td>
<td>One (1) parking space per employee, plus three (3) additional parking spaces</td>
</tr>
<tr>
<td><em>Mini (Self Storage) Warehouse</em></td>
<td>One (1) parking space per ten (10) storage units</td>
</tr>
<tr>
<td><em>Mobile Home Park</em></td>
<td>Two (2) parking spaces per mobile home park lot</td>
</tr>
<tr>
<td><em>Nursing Home, Residential Facility for the Developmentally Disabled, Residential Facility for the Mentally Ill or Disabled</em></td>
<td>One (1) parking space per every four (4) beds, plus one (1) parking space per employee</td>
</tr>
<tr>
<td><em>Offices; Professional Offices</em></td>
<td>Three and one half (3.5) parking spaces per one-thousand (1000) square feet of <em>gross floor area</em></td>
</tr>
</tbody>
</table>
# Chapter 11

## Off-Street Parking and Loading Regulations

<table>
<thead>
<tr>
<th>Category</th>
<th>Required Parking Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Post Offices</strong></td>
<td>One (1) parking space per two-hundred (200) square feet of <em>gross floor area</em></td>
</tr>
<tr>
<td><strong>Recreational Facility, indoor;</strong></td>
<td>One (1) parking space per one-hundred (100) square feet of floor area in public use, plus one (1) parking space per employee</td>
</tr>
<tr>
<td><strong>Recreational Facility, outdoor; Such as Park; Campground; Athletic Fields</strong></td>
<td>One and one-half (1.5) parking spaces per one-thousand (1000) square feet of site area accessible to the public, exclusive of the parking area</td>
</tr>
<tr>
<td><strong>Restaurant, all types</strong></td>
<td>One (1) parking space per each three (3) customer seats based upon the maximum number of persons that can be accommodated at the same time in accordance with design capacity (including outdoor seating areas) * Minimum of five (5) parking spaces required</td>
</tr>
<tr>
<td><strong>Retail Sales</strong></td>
<td>Three and one half (3.5) parking spaces per one-thousand (1000) square feet of <em>gross floor area</em> * Minimum of five (5) parking spaces required</td>
</tr>
<tr>
<td><strong>Schools, Elementary (Primary)</strong></td>
<td>Two (2) parking spaces per classroom, plus one (1) parking space per employee</td>
</tr>
<tr>
<td><strong>Schools, Middle (Intermediate)</strong></td>
<td>Two (2) parking spaces per classroom, plus one (1) parking space per employee, in addition to the requirements for the auditorium or stadium, whichever is greater</td>
</tr>
<tr>
<td><strong>Schools, High (Secondary)</strong></td>
<td>One (1) parking space per ten (10) students, plus one (1) parking space per employee, in addition to the requirements for the auditorium or stadium, whichever is greater</td>
</tr>
<tr>
<td><strong>Veterinary or Veterinary Hospital</strong></td>
<td>Three (3) parking spaces per exam rooms plus one (1) parking space per employee</td>
</tr>
<tr>
<td><strong>Warehousing</strong></td>
<td>One (1) parking space per employee</td>
</tr>
</tbody>
</table>
Chapter 11
Off-Street Parking and Loading Regulations

| Uses Not Specified | For any use not specified above, specific requirements shall be determined by the Zoning Administrator and shall be based upon requirements for similar uses, expected demand and traffic generated by the proposed use, and other information from appropriate traffic engineering and planning criteria. |

(B) For multiple-use buildings, structures and uses, the required number of parking spaces for each use shall be calculated based upon the parking requirements for that specific use to determine the minimum aggregate number of parking spaces required.

(C) Increase in Intensity of Use.

Additional off-street parking spaces shall be required whenever there is:

(1) A change of use of a building, structure or lot; or

(2) An addition to any unit of measurement specified herein (i.e., dwelling units, gross floor area, seating capacity, number of employees, etc.), whether such total increase occurs at one (1) time or in successive stages.

(D) Units of Measurements.

1. Employees. The number of employees shall be compiled based upon the maximum number of persons employed on the premises at any one (1) time on an average day or average night, whichever is greater.

2. Gross Floor Area. Gross floor area shall be determined per the definition of gross floor area in Chapter 19 Definitions.

3. Seating Capacity / Building Capacity. Seating or building capacity shall be based upon the determination of the Fire Marshal regarding maximum building capacity.

(E) Required Parking for the Disabled.

Every off-street parking area and parking garage available to the public shall have parking spaces reserved for the use of physically handicapped persons as specified in the TABLE 11.03 Minimum ADA Parking Spaces, below, provided however, facilities which provide medical care and other services to persons with mobility impairments shall provide ADA Parking Spaces as follows:
(1) Outpatient units and facilities: 10% of the total number of off-street parking spaces; and,

(2) Units and facilities that specialize in treatment services for persons with mobility impairments: 20% of the total number of off-street parking spaces.

Table 11.03
Minimum ADA Parking Spaces
As required by ADA Accessibility Guidelines for Buildings and Facilities, Chapter 4.1.2 (5)(a), published in the Federal Register, Volume 56, No. 144, dated July 26, 1991(as amended)

<table>
<thead>
<tr>
<th>Total Parking Spaces Required</th>
<th>Minimum Number of Reserved Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 25</td>
<td>1</td>
</tr>
<tr>
<td>26 - 50</td>
<td>2</td>
</tr>
<tr>
<td>51 - 75</td>
<td>3</td>
</tr>
<tr>
<td>76 - 100</td>
<td>4</td>
</tr>
<tr>
<td>101 - 150</td>
<td>5</td>
</tr>
<tr>
<td>151 - 200</td>
<td>6</td>
</tr>
<tr>
<td>201 - 300</td>
<td>7</td>
</tr>
<tr>
<td>301 - 400</td>
<td>8</td>
</tr>
<tr>
<td>401 - 500</td>
<td>9</td>
</tr>
<tr>
<td>501 – 1000</td>
<td>Two percent (2%) of the total number of off-street parking spaces.</td>
</tr>
<tr>
<td>1001 and over</td>
<td>Twenty (20), plus one (1) for each one hundred (100) off-street parking spaces over one thousand (1000).</td>
</tr>
</tbody>
</table>

Section 11.07 Bicycle Racks.

In order to encourage alternative means of transportation, any off-street parking area which contains in excess of twenty-five (25) parking spaces shall provide a bicycle rack capable of parking a minimum of two (2) bicycles for every ten (10) spaces provided.
Chapter 11
Off-Street Parking and Loading Regulations

Section 11.08 Off-Street Loading Requirements.

(A) Loading for Buildings, Structures or Uses.

All Commercial or Industrial development or conversions of use for which an improvement location permit is required by this Ordinance shall provide off-street loading areas in accordance with this Section 11.08 Off-Street Loading Requirements.

(B) Design and Construction of Loading Areas.

(1) The design and construction of all required loading spaces or excess loading spaces shall be in compliance with the stricter of the regulations contained in this Section 11.08 Off-Street Loading Requirements, or the minimum specifications prescribed by the Town.

(2) The following standards shall apply to the design of off-street loading areas:

(a) Loading Space Dimensions. A required or excess off-street loading space shall be at least twelve (12) feet in width by at least sixty (60) feet in length, exclusive of aisle and maneuvering space, and shall have a vertical clearance of at least fourteen (14) feet.

(b) Minimum Aisle Width. Each required off-street loading space shall open directly upon an aisle or interior access drive with a width of at least thirty-five (35) feet and creating a total maneuvering area, inclusive of the loading space, of at least one-hundred and five (105) feet, unless subject to the provisions of sub-Section (4), below regarding excess loading spaces.

(c) Maneuvering. Each maneuvering area, aisle and interior access drive utilized to access a required loading space or an excess loading space shall be so designed and located as to provide safe and efficient ingress/egress to each loading space.
and so that trucks do not back from or into a public street, or onto an adjoining property (unless the subject property and the adjoining property are located within the same integrated center or industrial park and such maneuvering area is subject to a recorded easement allowing such maneuvering).

(d) Design of Excess Loading Areas. Any use which provides loading spaces at a rate of: greater than four (4) loading spaces; and, more than two (2) times the minimum required by this Ordinance, shall provide a total maneuvering area of at least one-hundred and five (105) feet which is separate and distinct from the minimum aisle width requirement of thirty-five (35) feet.

(e) Alternate Design for Loading Areas. In those instances where insufficient area exists to provide for perpendicular loading spaces as allowed by sub-Section (B)(2)(b) or sub-Section (B)(2)(d), above, angled or parallel loading spaces may be proposed, provided:
Chapter 11
Off-Street Parking and Loading Regulations

1. the design of such loading area shall include either a one-way traffic pattern or orients the loading spaces so that traffic flow from the loading spaces is in the direction of traffic movement on the side of aisle on which the loading spaces are located;

2. the loading spaces are accessed by an aisle or interior access drive having a width of not less than thirty-five (35) feet plus sufficient maneuvering area outside of the aisle of the interior access drive, based upon the angle of the loading spaces, to provide safe and efficient maneuverability; and

3. the design of such angled or parallel loading spaces shall be subject to the approval of the Town.

(C) Location of Off-Street Loading Spaces.

(1) All off-street loading spaces shall be located on the same lot as the use served.

(2) No off-street loading spaces shall be located between the front lot line and the front facade of any portion of the building served, provided, however, in the case of a double frontage lot, off-street loading spaces may be located between a front lot line of a perimeter street and the rear of the building served, and the yard between the off-street loading spaces and such front lot line is landscaped in compliance with the regulations of Chapter 8 Landscape Regulations for Type C/Full Screening.
Chapter 11
Off-Street Parking and Loading Regulations

Locations for Off-Street Loading Spaces

Location of Off-Street Loading Areas on a Through Lot (Screening Required)
Chapter 11
Off-Street Parking and Loading Regulations

Pull-Off Loading Area

(3) All off-street loading spaces shall be oriented toward a side lot line or rear lot line.

(4) No off-street loading spaces shall be located in a required side and rear yard.

(D) Use of Required Loading Area.

Space allocated for required or excess off-street loading spaces and associated maneuverability shall not be used to satisfy off-street parking space requirements.
(E) Surface of Loading Areas.

All off-street loading areas and the ingress/egress to and from such off-street loading areas located on such lot shall be hard surfaced with asphalt, concrete or other material to provide a durable dust-free surface.

(F) Special Regulations for Gasoline Service Stations.

The site design of any gasoline service station shall provide for the safe and efficient ingress and egress to the site for fuel delivery vehicles and an area for such fuel delivery vehicles to park while unloading which does not interfere with or impede ingress or egress to or from any public street.
Chapter 12
Additional Regulations for Specific Uses

CHAPTER 12
ADDITIONAL REGULATIONS FOR SPECIFIC USES

Section 12.01 Regulations for Controlled uses.

(A) Intent.

Controlled uses are hereby recognized as having objectionable secondary impacts. A concentration of controlled uses in a particular area can increase the impact of those objectionable secondary impacts to the point where a deleterious impact is created on area properties. In order to prevent the concentration of controlled uses and to prevent such deleterious impacts from leading to the development of blighted areas, any controlled use, in addition to the permitted use and development standard regulations specified in any primary zoning district, shall also be subject to the additional regulations of this Chapter.

(B) Recognized Controlled uses.

(1) Adult Business.

(2) Casinos and all other areas where gambling games are conducted;

(3) Establishments for the sale of beer or intoxicating beverages for consumption on the premises, excluding restaurants at which the serving of such beverages is incidental to the serving of food as the principal activity;

(4) Off-track, pari-mutual wagering facilities.

(C) Districts Permitted.

Controlled uses are permitted only as a special exception use in the C Commercial and I Industrial Districts. See Section 4.06 TABLE of Official Uses.
(D) Definitions for Adult Businesses.

The following terms related to adult businesses shall be defined as set forth below. All other terms shall have the meanings set forth in Chapter 19 Definitions, of this ordinance.

(1) “ADULT BUSINESS” means an adult bookstore, adult motion picture theater, adult mini motion picture theater, adult motion picture arcade, adult cabaret (a.k.a. Class B cabaret), adult drive-in theater, adult live entertainment arcade, adult massage parlor, adult motel, or adult service establishment.

(2) “ADULT BOOKSTORE” means an establishment having as a preponderance of its stock-in-trade or its dollar volume in trade, books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(3) “ADULT BUSINESS, ENLARGEMENT OF” means an increase in the size of the building, structure, or premises in which the adult business is conducted by either construction or use of:

(a) An adjacent building;

(b) An additional building; or

(c) The construction or use of any portion of an adjacent building or additional building, whether located on the same or an adjacent lot or parcel of land.

(4) “ADULT BUSINESS, ESTABLISHING” means any of the following:

(a) The opening or commencement of an adult business as a new business;

(b) The conversion of an existing business, whether or not an adult business, to any of the adult businesses defined herein;

(c) The addition of any of the features of 1 or more of the adult businesses defined herein to an existing business;

(d) The addition of any of the adult businesses defined herein to any other existing adult business; or

(e) The relocation of any adult business.
(5) “ADULT BUSINESS, RECONSTRUCTION OF” means the rebuilding or restoration of any nonconforming adult business use which was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion, or other calamity, or act of God if the damage or destruction exceeds 50% of the fair market value of the building, structure, or the facilities affected.

(6) “ADULT BUSINESS, RESUMPTION” means the reuse or reoccupation of a nonconforming adult business use which has been discontinued for a period of 6 or more consecutive months.

(7) “ADULT BUSINESS, STRUCTURAL ALTERATION OF” means any change which would prolong the life of the supporting members of a building or structure such as bearing walls, columns, beams or girders, except such changes as are ordered made pursuant to the provisions of the Unsafe Building Law, I.C. 36-7-9-1, and any amendments thereto.

(8) “ADULT CABARET (a.k.a. CLASS B CABARET)” means any cabaret, nightclub, bar, tavern, restaurant or similar establishment, not including a 21 and over cabaret, a family cabaret, family restaurant, or family restaurant with lounge, which features:

(a) Persons who appear in a state of semi-nudity;

(b) Live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers where the performances are distinguished or characterized by the exposure of specified anatomical areas or by emphasis on specified sexual activities;

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons; or

(d) Persons who engage in lewd, lascivious, or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(9) “ADULT DRIVE-IN THEATER” means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing, or
Chapter 12
Additional Regulations for Specific Uses

relating to specified sexual activities or specified anatomical areas for observation by patrons.

(10) “ADULT LIVE ENTERTAINMENT ARCADE” means any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances, or other gyrational choreography which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.

(11) “ADULT MINI MOTION PICTURE THEATER” means an enclosed building with a capacity of more than 5 but less than 50 persons, used for presenting films, motion pictures, video cassettes, slides, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(12) “ADULT MOTEL” means a hotel, motel, or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

(13) “ADULT MOTION PICTURE ARCADE” means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-reducing devices are maintained to show images to 5 or fewer persons per machine at one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(14) “ADULT MOTION PICTURE THEATER” means an enclosed building with a capacity of 50 or more persons used for presenting films, motion pictures, video cassettes, slide or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(15) “ADULT SERVICE ESTABLISHMENT” means any building, structure, premises, or other facility, or any part thereof, under common ownership or control which
provides a preponderance of services involving specified sexual activities or display of specified anatomical areas.

(16) “ADULT USE, NONCONFORMING” means any building, structure, or land legally established as an adult business prior to the effective date of this chapter, but which would be prohibited, regulated, or restricted under the provisions of this chapter.

(17) “SERVICES INVOLVING SPECIFIED SEXUAL ACTIVITIES OR DISPLAY OF SPECIFIED ANATOMICAL AREAS” means (as used to define an adult service establishment). Any combination of 2 or more of the following activities:

(a) The sale or display of books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas;

(b) The presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons;

(c) The operation of coin- or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors or other image producing devices to show images to 5 or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas; or

(d) Live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where the performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(18) “SPECIFIED ANATOMICAL AREAS” means any of the following:

(a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
(19) “SPECIFIED SEXUAL ACTIVITIES” means any of the following:

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Acts of human masturbation, sexual intercourse, or sodomy;

(c) Fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts;

(d) Flagellation or torture in the context of a sexual relationship;

(e) Masochism, erotic or sexually oriented torture, beating, or the infliction of pain;

(f) Erotic touching, fondling, or other such contact with an animal by a human being; or

(g) Human excretion, urination, menstruation, vaginal, or anal irrigation as part of or in connection with any of the activities set forth in divisions (1) through (6) of this definition.

(E) Spacing and Distance Regulations.

(1) Measurement of Distance for Controlled uses:

(a) All measurements shall be from the lot lines of the lot or out lot occupied by the controlled use;

(b) All distance measurements shall be measured in a straight line, without regard to intervening buildings, structures or objects.

(2) Spacing Between Controlled Uses. No building or lot may be used, and no building may be erected, moved, structurally altered or enlarged within one-thousand (1,000) feet of any two (2) controlled uses.

(3) Spacing Between an Adult Business and Other Uses and Districts. No building or lot may be used, and no building may be erected, moved, structurally altered or enlarged within five-hundred (500) feet of any:
(a) District within the City of Mishawaka, St. Joseph County or Elkhart County which allows any residential use as a primary use;

(b) A lot being legally established for a dwelling use, religious use, school use or park use;

(c) Any use established for the care of children, ages birth to 18; or

(d) Any of the following districts:

1. In the Town of Osceola:
   - R1 Single Family District
   - R2 Multi Family District
   - OB Office Buffer District
   - PUD Planned Unit Development District (that does not specifically include adult businesses as permitted uses)

2. In St. Joseph County:
   - A: Agricultural District
   - R: Single Family District
   - R-2: Residential District
   - O/B: Office / Buffer District
   - O: Office District
   - B: Business District
   - C: Commercial District
   - PUD Planned Unit Development (that does not specifically include adult businesses as permitted uses)

3. In the City of Mishawaka:
   - R-1 Single Family
   - R-2 Single and Multifamily
   - R-3 Preference for Multifamily
   - R-4 Mobile Home Park
   - C-2 Shopping Center
   - PUD Planned Unit Development

4. In Elkhart County:
   - Any residential or agricultural district
Chapter 12
Additional Regulations for Specific Uses

(F) Continuation of Nonconforming Controlled Use. This sub-Section 12.02 is subject to the provisions of Chapter 3 Nonconforming Lots, Uses, Buildings, Structures or Signs, provided, however, a controlled use may be structurally altered for the purposes of constructing, enlarging or refurbishing kitchen, food service, restroom or indoor storage areas, if such structural alterations are performed within the existing building, and the seating capacity or patron service area is not increased.

(G) Exterior Display for Adult Businesses.

Notwithstanding any other provisions of this Ordinance to the contrary, no adult business shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public right-of-way.

Section 12.02 Standards for Manufactured Home Dwellings.

(A) Construction. All manufactured home dwellings shall comply with the following requirements:

(1) Compliance with Federal Standards. Each module of a manufactured dwelling home must bear a label certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standards Law of 1974 (42 U.S.C. 5401 et seq.);

(2) Date of Construction. Each manufactured home dwelling shall have been constructed after January 1, 1981;

(3) Main Floor Area. Each manufactured home dwelling shall have at least nine-hundred and fifty (950) square feet of main floor area (exclusive of garages, carports and open porches); and,

(4) Multiple Sections. Each manufactured home dwelling shall be composed of more than one (1) section.

(B) Installation Standards. All manufactured home dwellings shall be installed in compliance with the following requirements:

(1) Permanent Perimeter Enclosure Required. Each manufactured home dwelling shall be set into an excavated area with crawl space walls or basement walls constructed in accordance with the terms of the Indiana One and Two Family Dwelling Code. The space between the floor joists of the manufactured home dwelling and the excavated
Additional Regulations for Specific Uses

under-floor grade shall be completely enclosed with a permanent perimeter enclosure, except for required openings; and,

(2) Support System. All load-bearing foundations for a manufactured home dwelling shall be installed in conformance with the regulations of the Indiana One and Two Family Dwelling Code and with the manufacturer's installation specifications.

(C) Siding Standards. The siding materials used on all manufactured home dwellings shall be limited to the following:

(1) Residential horizontal aluminum lap siding;

(2) Residential horizontal vinyl lap siding;

(3) Wood-grain, weather resistant, pressboard siding;

(4) Stucco siding;

(5) Brick siding; or,

(6) Stone siding.

(D) Roofing Standards. The roofing materials used on all manufactured home dwellings shall be limited to the following:

(1) Asbestos shingles on a roof pitched according to the design specifications of the shingles;

(2) Fiberglass shingles on a roof pitched according to the design specifications of the shingles;

(3) Shake shingles on a roof pitched according to the design specifications of the shingles;

(4) Asphalt shingles on a roof pitched according to the design specifications of the shingles;

(5) Slate; or,

(6) Tile.
Chapter 12
Additional Regulations for Specific Uses

Section 12.03 Regulations for Wireless Telecommunications Facilities.

(A) Intent.

This Section 12.03 creates the framework for the siting of wireless telecommunications facilities in a manner which protects the public health, safety and general welfare of the community; provides comprehensive service to the community; protects the community from visual clutter; is compatible with existing and future land use; and preserves significant view corridors.

(B) Policy.

The following policy statements are set forth to provide guidance to wireless communications facility providers in the placement of wireless telecommunication facilities within the Town. It is hereby declared that the Town of Osceola Telecommunications Policies for the corporate limits of the Town shall be to:

1. Facilitate the comprehensive provision of wireless telecommunication services to the residents and businesses of the Town;

2. Maximize the use of existing and approved telecommunication towers, buildings, and structures to accommodate new wireless telecommunication antennas in order to minimize the number of telecommunication towers needed to comprehensively serve the community;

3. Minimize the number, height, obtrusiveness, and the visual impacts of telecommunications towers, associated equipment, and buildings;

4. Encourage wireless telecommunication facilities to be located in areas which are least disruptive to residential, park, open space, and greenway uses and to be as unobtrusive and invisible as reasonably possible;

5. Ensure that the height of telecommunications towers has the least visual impact and is no greater than required to achieve service area requirements and potential co-location;

Tapering Monopole with Co-Location Using Slick Antenna
Additional Regulations for Specific Uses

(6) Site telecommunications towers to minimize locations which are visually solitary or prominent when viewed from residential areas or any public way;

(7) Site telecommunications towers at locations which are obscured by vegetation, tree cover, topographic features, buildings or other structures to the maximum extent feasible;

(8) Protect views of and vistas from architecturally or historically significant structures and historically significant landscapes so that these architectural or historical resources are not impaired or diminished by the placement of telecommunications towers; and

(9) Avoid potential damage to adjacent properties from telecommunication towers failure through structural design standards and setback requirements.

(C) Applicability. Notwithstanding any other provision of this Ordinance to the contrary, wireless telecommunications facilities, when such are permitted by and in compliance with federal law and the laws of the State of Indiana (including but not limited to non-interference with public safety telecommunications), shall be regulated and governed by the regulations and requirements of this Chapter.

(D) Amateur Radio Exemption. This Chapter shall not apply to nor be construed to apply to Amateur Radio Operators who are licensed to operate a radio or transmitter by the Federal Communications Commission under Part 97 of the Federal Communications Commission's Rules.

(E) Compliance with Other Laws. A telecommunications tower shall be erected and operated in compliance with the most current Federal Communication Commission and Federal Aviation Administration rules and regulations and other applicable federal and state standards. All telecommunications towers shall comply with all ordinances of the Town not in conflict with this Chapter.

(F) Siting Hierarchy of Wireless Telecommunications Facilities. Development of wireless telecommunications facilities shall be in accordance with the following siting alternatives hierarchy. The order of ranking, from highest to lowest, shall be from sub-Section (F)(1), to sub-Section (F)(2), to sub-Section (F)(3), outlined below. Where a lower ranked alternative is proposed, the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible or available.

(1) Co-location. The co-location of antenna on existing telecommunication towers and associated equipment or buildings shall comply with the following regulations:
Chapter 12
Additional Regulations for Specific Uses

(a) The co-location or placement of new telecommunications *antennas* upon existing telecommunications towers are hereby declared as permitted uses in all districts and may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (H) Telecommunications *Antennas Mounted on Existing Buildings or Structures* below, are met.

(b) Associated equipment or *buildings*, when located within an existing compound area that is in compliance with this Ordinance, may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (I) Associated Equipment or *Buildings* and Compound Area Requirements below, are met.

(2) Existing *Structure* or *Building* Utilization. The utilization of existing *structures* and *buildings* for placement of *antenna* and associated equipment or *buildings*, including surface-mounted and roof-mounted applications of *telecommunication antennas* on existing *buildings* and structure-mounted applications of *telecommunication antennas* on water towers, electric-line transmission towers, or other existing *structures*, shall comply with the following regulations:

(a) The placement of new telecommunications *antennas* upon existing *structures* and *buildings* are hereby declared as permitted uses in all districts and may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (H) Telecommunications *Antennas Mounted on Existing Buildings or Structures*, below, are met;

(b) Associated equipment or *buildings*, when located within an existing *building* or compound area that is in compliance with this Ordinance, may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (I) Associated Equipment or *Buildings* and Compound Area Requirements below, are met.
(3) New Telecommunications Tower Locations. New telecommunications towers and associated equipment or buildings shall comply with the following regulations:

(a) Where Permitted. Wireless telecommunications facilities requiring the construction of a telecommunications tower, building, or structure are hereby declared as special exception uses in all districts and requiring the approval of a special exception use prior to the issuance of an improvement location permit, provided, however, no new telecommunications tower shall be located within five-hundred (500) feet of a residential district or use unless the applicant can demonstrate through the materials required by sub-Section 12.03 (F) (3) (d), below, that there are no other locations, buildings or structures beyond five-hundred (500) feet of a residential district or use which are available and which can provide the necessary wireless telecommunications services to the residents and businesses of the Town;

(b) Alternatives Exhausted. The applicant for a wireless telecommunications facility special exception use shall demonstrate that they have exhausted all efforts to locate the proposed telecommunications antennas upon existing telecommunications towers, buildings or structures in the geographical area of the proposed telecommunications antennas. In the event that a wireless communications provider claims that efforts to locate the proposed telecommunications antennas upon existing telecommunications towers, buildings or structures failed because of the demanded lease amount of the owner of an existing telecommunications tower, such dispute over fair market value shall be settled as set forth in sub-Section 12.03 (F) (3) (c), below.

(c) Fair Market Value. In the event of dispute between wireless telecommunications providers regarding the fair market value of rental for a co-location on an existing telecommunications tower which is subject to a requirement to provide co-location at a reasonable and non-discriminatory basis and at a cost not materially exceeding fair market value, the applicant, at the applicant's cost, shall select an independent appraiser to determine fair market value of such rental. In the event of a dispute over the appraisal results, the wireless telecommunication providers shall employ a new appraiser subject to the approval of the Zoning Administrator. The new appraisal shall be performed at the expense of the wireless telecommunication providers involved in the dispute. The expense of the new appraisal shall be equally shared between the wireless telecommunication providers and the results shall be conclusive.

(d) Additional Special Exception Use Filing Requirements. In addition to the requirements specified in Section 15.03 (I) Special Exception Uses of this Ordinance and any applicable Rules of Procedure, all applications for a special
exception use for a new telecommunications tower location shall include the following:

1. A service plan for the Town. The service plan shall demonstrate efforts to minimize the size and number of telecommunications tower locations throughout the geographical area, taking into consideration existing technology. The service plan shall include, but not be limited to the following information:

   a. A narrative detailing:

      i. the reason of need (coverage, capacity, new users, etc.) for a telecommunications tower or wireless communication facility at the requested site;

      ii. the nature of any existing wireless communication facility sites indicated on the map required by sub-Section 12.03 (F) (3) (d) 1. b., below, shall be documented (i.e., freestanding structure with available heights noted, roof-mounted applications, existing telecommunications towers with information regarding co-location opportunities or limitations, service providers utilizing each such wireless communication facility site, etc.); and

      iii. the manner in which the proposed placement will promote the Town of Osceola Telecommunications Policies.

   b. A map of the Town identifying the following:

      i. all existing telecommunications towers; and,

      ii. all structures or buildings within a one (1) mile radius of the proposed site that have a height equal to or greater than the height of the proposed telecommunications tower minus thirty (30) feet; and

      iii. in the event that a telecommunications tower is proposed within one (1) mile of the boundary of the Town, such map shall include the information required above for all areas within one (1) mile of the proposed telecommunications tower.

   c. If the applicant is a licensed provider of wireless communication services, the applicant shall supply individual coverage maps of the Town which:
i. identify all existing locations utilized by the licensed provider's network and reflects the current coverage levels to the Town;

ii. identify the proposed coverage levels of the licensed provider's network after the installation of the proposed wireless telecommunication facility; and

iii. in the event that the licensed provider proposes multiple sites, a separate coverage map for each additional wireless telecommunication facility and an overall coverage map based upon all proposed wireless telecommunication facilities shall be provided.

2. A certification, in a manner acceptable to the Town from the owner of the telecommunications tower or the property on which the telecommunications tower is located, that the telecommunications tower is available for use by another wireless telecommunications provider on a reasonable and non-discriminatory basis and at a cost not exceeding the Fair Market Value for the use of the facilities.

3. A designation by the owner of the telecommunications tower or the property on which such telecommunications tower is located of an area which is set aside for the equipment of future users of the telecommunications tower and is located:

   i. within the proposed compound area; or,

   ii. within a separate compound area located on the same lot and located no further from the telecommunications tower than the distance from the telecommunications tower to the proposed compound area plus fifty (50) feet.

4. Color photo simulations showing the site of the proposed telecommunications tower with a photo-realistic representation of the proposed telecommunications tower as it would appear viewed from the closest residential district and from adjacent public right-of-way, and photographs of the same views as in the photo simulations showing the

   Tapering Monopole with Slick Antenna
current appearance of the site without the proposed telecommunications tower.

(G) Development Standards. In addition to complying with the requirements for a *special exception use* for the *district* in which the lot is located, all *wireless telecommunications facilities* shall comply with the following additional development standards:

1. **Telecommunication Tower and Antenna array.**
   
   (a) Height. The maximum height of a telecommunications tower, including *antenna array*, shall be less than two-hundred (200) feet above grade.

   (b) Telecommunications Tower Type. All new telecommunications towers shall be of a tapering monopole construction unless a determination is made in connection with a special exception request that an alternative design would better blend into the surrounding environment and is approved as a waiver of development standards as provided for and regulated in Section 15.03 (I) Special Exception Uses, of this Ordinance.

   (c) Guys and Guy Anchors. If a guyed telecommunication tower is approved, all guys and guy anchors shall be located within the buildable area of the *lot* and shall not be located within any required *yard*.

   (d) Security Fencing. The base of a telecommunications tower and all guy anchors shall be enclosed by security fencing. This fencing shall conform with the requirements detailed in sub-Section 12.03 (I) (1), below.

   (e) Structural Design. A telecommunications tower shall be designed and built so as to:

   1. Be capable of use by at least two wireless communications providers for a telecommunications tower less than eighty (80) feet in height;

   2. Be capable of use by three or more wireless communications providers for a telecommunications tower of eighty (80) feet in height or greater;

   3. Accommodate *antenna arrays* consisting of nine (9) to twelve (12) *antennas* for each *antenna array*, provided, however, this regulation shall not apply to slick *antenna* applications;

   4. Locate such *antenna arrays* within fifteen (15) vertical feet of each other;

   5. Have no more than three (3) degrees of twist and sway at the top elevation; and
6. Provide internal cable routing for all tapering monopole telecommunication towers.

(f) Antenna Arrays and Types. To minimize adverse visual impacts, the antenna type used shall be in accordance with the following alternatives hierarchy. The order of ranking, from highest to lowest, shall be 1, 2, 3, 4, and 5, outlined below. Where a lower ranked alternative is proposed, the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible or available:

1. Flagpole antenna (with or without a flag, as appropriate to the setting) (See Chapter 10 Sign Regulations for information regarding flags);

2. Slick antennas or stealth antennas other than flagpole antennas;

3. Panel antennas, also known as directional or sectored antennas;

4. Whip antennas; and

5. Dish antennas.
Chapter 12
Additional Regulations for Specific Uses

(g) Signs. No lettering, symbols, images, trademarks, signs (including banners, pennants or streamers), or advertising shall be placed on or affixed to any part of a telecommunications tower, antenna array or antenna, other than as required by Federal Communications Commission regulations regarding telecommunications tower registration or other applicable law.

(h) Safety. Telecommunications towers shall be constructed to minimize potential safety hazards. Telecommunications towers shall be constructed so as to meet or exceed the most recent EIA-222 standards, and prior to issuance of an improvement location permit, the Zoning administrator shall be provided with an engineer's certification that the telecommunications tower's design meets or exceeds such EIA-222 standards. Guyed telecommunications towers shall be located in such a manner that if the telecommunications tower should fall along its longest dimension, the telecommunications tower will remain within the lot lines and avoid dwelling units, habitable structures, public street rights-of-way, utility lines and other telecommunications towers.

(i) Lights. No signals, lights or other illumination (including holiday lights or outdoor strings of lights) shall be permitted on telecommunications towers unless required by the Federal Communications Commission, the Federal Aviation Administration, or the Town. When incorporated into the approved design of the telecommunications tower, outdoor light fixtures used to illuminate ball fields, parking areas, or similar areas, in compliance with the requirements of Chapter 9 Lighting Regulations, of this Ordinance, may be attached to the telecommunications tower.

(j) Modifications. If any additions, changes or modifications are to be made to a telecommunications tower, the Zoning Administrator shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change or modification conforms to structural wind load and all other requirements of the current Building Code adopted by the Town.

(H) Telecommunications Antennas Mounted on Existing Buildings or Structures.

(1) Roof-Mount. Roof-mounted telecommunications antennas are permitted on buildings and structures in all districts, except for single family dwellings or two family dwellings, without a special exception use, provided:

(a) A non-whip antenna:

1. Does not exceed the height of the building by more than ten (10) feet; and,

2. Shall be no closer than ten (10) feet to the perimeter of the building.
Chapter 12
Additional Regulations for Specific Uses

(b) A whip antenna:

1. Does not exceed the height of the building by more than fifteen (15) feet; and,

2. Shall be no closer than fifteen (15) feet to the perimeter of the building.

(c) Prior to installation of a roof-mounted telecommunications antenna or equipment, the Zoning Administrator shall be provided with an engineer's certification that the roof will support the proposed telecommunications antenna or associated roof-mounted equipment.

(2) Surface-Mount. Surface-mounted telecommunications antennas are permitted on buildings or structures in all districts without a special exception use, provided:

(a) the antenna is of the non-whip antenna type;

(b) the non-whip antenna is mounted flush with the exterior of the building or structure so that it projects no more than thirty (30) inches from the surface of the building or structure to which it is attached; and,

(c) the non-whip antenna's appearance is designed to blend with the color or texture of the surrounding surface of the building or structure.

(3) Other Existing Structures. Telecommunications antennas are permitted on existing utility, lighting, telecommunications towers and other structures in all districts without a special exception use, provided:

(a) the existing utility, lighting, telecommunications towers and other structure exceeds fifty (50) feet in height above grade;

(b) the telecommunications antenna does not exceed the height of the structure by more than ten (10) feet if a non-whip antenna or fifteen (15) feet if a whip antenna.

(c) Existing structures may be rebuilt if necessary to support the load of the new telecommunications antenna without further zoning proceedings provided:
Chapter 12
Additional Regulations for Specific Uses

1. If the structure to be rebuilt is not an existing telecommunications tower, the rebuilt structure shall comply with all applicable regulations of the district in which such structure is located; or,

2. If the structure to be rebuilt is an existing telecommunications tower, the new telecommunications tower shall:
   
   i. not exceed the height of the existing telecommunications tower; and,
   
   ii. comply with all other regulations contained in this Section for the erection of a new telecommunications tower, except that a special exception use shall not be required.

(4) Application. When an application for an improvement location permit to locate a telecommunications antenna on an existing building or other structure is made, the Zoning Administrator shall be provided with color photo simulations showing the site of the existing structure with a photo-realistic representation of the proposed telecommunications antenna and the existing structure or any proposed reconstruction of the structure as it would appear viewed from the closest residential district and from adjacent public right-of-way. The applicant shall also submit photographs of the same views as in the photo simulations showing the current appearance of the site without the proposed telecommunications antenna.

(I) Associated Equipment or Buildings and Compound Area Requirements.

(1) Fencing and Landscaping of Ground Mounted Associated Equipment or Buildings:

(a) Fencing Required. The compound area and all guy anchors shall be secured with a board-on-board or chain link fence of not less than six (6) feet in height nor more than ten (10) feet in height. Security wire (barbed, razor, etc.) may be located on the telecommunications tower-side of the fence but shall not extend above the top of the fence. A chain link fence, if used, shall be black vinyl coated.

(b) Landscaping Required. Landscaping shall be installed around the perimeter of the fenced compound area running the full length of all sides of the compound area or building, except for entry gates or doors. The type of landscaping required shall be based upon the open space of the fence. If the fence has an open space of:

1. fifty (50) percent or greater, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or building, except for entry gates or doors, with a four (4) evergreen trees for every thirty (30) feet shall be installed on the outside of the fenced area; or,
Chapter 12
Additional Regulations for Specific Uses

2. less than fifty (50) percent but greater than twenty (20) percent, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or building, except for entry gates or doors, with a two evergreen trees for every twenty-five (25) feet shall be installed on the outside of the fenced area; or,

3. twenty (20) percent or less, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or building, except for entry gates or doors, with one (1) ornamental tree (minimum 1 ½" caliper) planted for every twenty-five (25) feet shall be installed on the outside of the fenced area.

(c) Interior access drives or walkways that lead to the entry into the compound area or building shall be hard-surfaced with asphalt or concrete.

(2) Exterior Materials and Roof Pitch of Associated Equipment or Buildings.

(a) Associated equipment buildings, whether ground or roof-mounted and not enclosed by a fence providing a complete sight barrier (i.e., a fence with zero open space), shall be similar in color, exterior material, and character to the main or adjoining building or structure. If ground mounted the roof pitch of the associated equipment building shall match the pitch of any existing building or structure.

(b) When an equipment building is located on a lot that does not contain an existing building or structure and is not enclosed by a fence providing a complete sight barrier (i.e., a fence with zero open space), the exterior material shall be either brick or stone. The roof pitch shall not be less than a three (3) foot vertical rise.
for each twelve (12) foot horizontal run, nor greater than a twelve (12) foot vertical rise for each twelve (12) foot horizontal run.


(1) Abandonment. Telecommunications towers, and associated ground-based equipment and buildings which have not been used for a period of one (1) year shall be deemed abandoned and shall be removed from the site.

(2) Notice Required. The owner of the telecommunications tower shall notify the Zoning Administrator within thirty (30) days that use of a telecommunications tower has been discontinued.

(3) Security Fund.

(a) Every telecommunications tower owner shall provide the Town, at the time of an application for an improvement location permit, a security fund in the form of cash, bond or irrevocable letter of credit to secure the payment of removing the telecommunications tower and associated ground-based equipment, buildings and foundations once they are determined to be abandoned per Sub-Section (J)(1), above, and from which to deduct fines and penalties for non-compliance with this Section or other applicable laws.

(b) The amount to be provided for each telecommunications tower shall be one-hundred and twenty-five (125) percent of the cost of demolition based upon a licensed engineer’s estimate of the cost of demolition of the telecommunications tower and associated ground-based equipment, buildings and foundations.

(c) Any reduction in the security fund provided, because of deductions of fines, penalties, or removal costs, shall be replenished to the total of the required amount within thirty (30) days after notice from the Town of the amount deducted and the deficiency created hereby.

(4) Refund. Within a reasonable period of time, not to exceed three (3) months after the telecommunications tower, associated ground-based equipment, buildings and foundations are removed, any remaining funds on deposit with the Town pursuant to this Section, after application and above all expenses provided for herein, shall be refunded to the appropriate owner or provider who created the security fund.
(K) Limitations on Special Exception Uses.

(1) A special exception use which does not fully comply with the Telecommunications Policies contained herein for telecommunications towers may be granted upon a determination that such a grant better accomplishes the Telecommunications Policies set out in this Section than would a strict application of these Telecommunication Policies. Such deviations from the Town of Osceola Telecommunications Policy shall be no greater than necessary to accomplish those policies.

(2) A special exception use which does not comply with the development standards of this Section 12.03 may only be granted upon:

(a) Approval of a waiver of development standards as provided for in Section 15.03 (I) Special Exception Uses, and regulated in Section 15.03 (H) Variance of Development Standards of this Ordinance; or,

(b) A separate application for and approval of a variance of development standards filed for and obtained in accordance with the requirements of Section 15.03 Board of Zoning Appeals of this Ordinance and any applicable Rules of Procedure.

Section 12.04 Regulations for Wind Energy Conversion Systems.

(A) Intent.

It is the intent of this Chapter to facilitate the comprehensive provision of wind energy conversion systems (“WECS”) to the businesses of the Town; minimize the height, obtrusiveness, and the visual impacts of WECS, and all associated equipment and buildings; encourage WECS to be located in such a manner as to minimize their impact to residential uses; public parks, open space, and greenways; streams, creeks bays and rivers; ensure that the height of WECS have the least visual impact, and are no greater than required to achieve their designated service; protect views of, and vistas from, architecturally or historically significant structures and historically significant landscapes so that these architectural or historical resources are not impaired or diminished by the placement of WECS; and avoid potential damage to adjacent properties from the failure of a WECS, through structural design standards and setback requirements.

(B) Classification.

WECS shall be classified as either:

(1) A Small Wind Energy Conversion System (“SWECS”), designed and installed exclusively for the on-site use of any associated electric power generation; or
Chapter 12
Additional Regulations for Specific Uses

(2) A Wind Energy Facility (“WEF”), designed and installed exclusively for off-site use of any associated electric power generation.

(C) Districts permitted.

(1) A SWECS is permitted as an accessory use in all zoning districts.

(2) A WEF is permitted as a special exception use in all zoning districts.

(D) General.

(1) A building permit is required for the installation of all WECS, and applications for a building permit shall be accompanied, at a minimum, by the following:

(a) Standard manufacturer’s drawings of the engineering specifications for the installation requirements of the wind turbine structure, including the tower, base, and footings. This analysis is frequently supplied by the manufacturer;

(b) A statement that the system shall comply with all applicable rules and regulations of the electric service provider for the property, and the Indiana Utility Regulatory Commission;

(c) A plot plan showing the location of the SWECS relative to all property lines, on-site structures, off-site structures within 1.5 times the height of the SWECS, utility locations (such as but not limited to overhead utilities, transformers, and junction boxes), and measured distances from all streams, creeks, rivers, public parks, public open space and greenways, and historic preservation districts;

(d) Certification that the installer of the SWECS is certified by the manufacturer of the SWECS, and has received the necessary training to properly and safely install the SWECS. Owner-installed SWECS will require an affidavit certifying that the installation will comply with the manufacture’s specifications, and the requirements of the electric service provider of the property;

(e) A drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer; and

(f) For a WEF, certification of the approval of the special exception use for a WEF by the Town, accompanied by a final site development plan, the site development
Chapter 12
Additional Regulations for Specific Uses

(2) All WECS shall comply with all Federal, State and local laws and ordinances not in conflict with this ordinance, including but not limited to:

(a) placement in floodplains and historic preservation districts;

(b) applicable FAA regulations, including any necessary approvals for installations close to airports;

(3) No WECS shall be installed until evidence has been given that the electric utility company has been informed of the customer's intent to install an interconnected, customer-owned WECS. Off-grid systems shall be exempt from this requirement.

(4) Signs. No WECS turbine, tower or associated building or structure may be used to advertise or promote any product or service. No word or graphic representation that may be construed as advertising, other than appropriate warning signs and the manufacturer’s technical information, shall be placed on a wind turbine, tower or other associated building or structure.

(5) Signal disturbance. Generators and alternators should be constructed so as to prevent the emission of radio and television signals. Upon a complaint of any signal disturbance, the operation of the WECS shall cease. The owner/operator shall correct any signal disturbance problem that is identified before the operation of the system can resume.

(6) Appearance, color and finish. The exterior surface of any visible components must be a non-reflective, neutral color, and blend into the surrounding environment as practical as possible. White or light grey is the color of preference unless the manufacturers color preference is proven to better blend into the environment. Rotors (blades) or vanes may be painted black to better assist in the prevention of ice build-up. Decorative items, such as flags, streamers and holiday and commemorative decorations are prohibited.

(7) Lighting. No WECS shall be artificially lighted, unless required by the FAA or appropriate authority.

(8) Support tower. The tower component of any WECS shall be one that is recommended and certified by the manufacturer:
(a) A building-mounted SWECS must be firmly anchored to the building (roof or wall) according to the manufacturers recommendations. Additional support brackets or cables must be anchored to the structure on which the SWECS is located; and

(b) A WECS mounted on a self-supporting tower shall be on a tower that is of monopole design, and does not require the use of guy wires or any other means of lateral support.

(E) Small Wind Energy Conversion Systems; Development Standards.

(1) Accessory use. A SWEC may be installed as an accessory use to a primary use. No SWEC shall be installed on any property without the existence of a primary use.

(2) Minimum lot size, number, maximum height. The minimum lot size, the maximum number of SWECS on a lot or parcel, and the maximum height of a SWEC shall be as specified in Table 12.01, below:

<table>
<thead>
<tr>
<th>District</th>
<th>Minimum Lot /Parcel Size</th>
<th>Maximum Number of SWECS</th>
<th>Maximum Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Districts</td>
<td>1 acre</td>
<td>1 per acre</td>
<td>60’</td>
</tr>
<tr>
<td>I  Industrial</td>
<td>-</td>
<td>-</td>
<td>80’</td>
</tr>
</tbody>
</table>

(3) Height. The height of a SWECS shall be measured from one foot above ground level to the highest extension of the blade, rotor, or vane. The minimum distance between the ground and the blade, rotor, or vanes shall be ten feet, as measured at the lowest point of the arc of the blade, rotor, or vane.

(4) Noise. SWECS shall not exceed sixty (60) decibels (dB), as measured at the closest property line. However, the sixty (60) decibels (dB) standard may be exceeded during short-term events such as utility outages and/or severe windstorms.
(5) Survival speed. SWECS shall be rated by the manufacturer as having a minimum survival wind speed of one-hundred (100) miles per hour.

(6) Setback. The minimum setback of a SWEC shall meet all of the following, measured from the edge of the support tower:

   (a) Two hundred feet from public parks, public open space, public greenways, historic preservation districts, streams, rivers and bays, measured from the nearest property lines, district lines, and/or the top of any stream or river bank;

   (b) One-half the height of the SWEC as measured per sub-Section (E)(3), above, to the nearest occupied off-site structure; and

   (c) Ten feet from any side and rear property line. Any property line adjacent to a street shall be deemed a front yard, and meet the location requirements in the following illustrations.

(7) Location on property. The location of a SWECS on a property shall be in accordance with sub-Section (E)(6), above, and with the following Illustration 1:
(8) Abandonment. A SWEC that is out of service for a continuous 24-month period will be deemed to have been abandoned, and shall be removed. Maintenance events which require extended periods of time beyond a 24-month period shall be brought to the attention of the Building Department.

(F) Wind Energy Facility; General.

(1) Special exception use required. A WEF is allowed in designated districts only as a special exception use, and after a public hearing by the Board of Zoning Appeals and approval by the Council.

(2) Preliminary site development project meeting required. A WEF is a unique facility having to meet specific location and technical requirements. A preliminary site development project meeting is required with the local agencies, and where at a minimum, the following information is to be provided:
(a) The location of the WEF identified on an aerial photograph, and the property tax ID numbers of the properties involved;

(b) The number and specifications of the wind turbines;

(c) The method and route of transportation of all equipment;

(d) The construction timeline and the production life of the WEF;

(e) A site plan showing the location of floodplains; wetlands; forested areas; on-site structures; structures within 500 feet of the development site; streams and legal ditches; utility lines, cables and pipelines; and

(f) The developer’s determination of public infrastructure needs.

(G) Wind Energy Facility; Approval.

(1) In addition to the requirements of sub-Section (G)(2)(b) below, the developer of a WEF shall provide all applicable information under sub-Section 12.04 (D) General, above, and any additional information requested from the preliminary site development project meeting.

(2) Applications for a WEF as a special exception use shall be accompanied by the items outlined under Section 15.03 (I) Special Exception Uses, in addition to the following:

(a) A site plan showing, at a minimum:

1. north arrow, written and graphic scale, general location map;
2. legal description;
3. the location and height (including the top of the arc of the blade) of the wind turbines;
4. the location of all other supporting structures such as but not limited to sheds, offices, operation and maintenance facilities, drives, and parking areas;
5. location of all structures on adjacent properties, within 300 feet of all property lines;
6. topography lines at two-foot intervals;
7. location of all natural features such as streams, ditches, floodplain, wetlands, and tree canopy;
8. drainage and soil erosion control, including location of all drainage tiles; and
Chapter 12  
Additional Regulations for Specific Uses

9. location of all utilities and utility corridors, such as but not limited to electric transmission lines, natural gas pipe lines, petroleum pipe lines, fiber optic lines, sewer and water lines.

(b) A site development report including but not limited to the following items:

1. the schedule and phasing of construction; the transportation route for the delivery of, and the maintenance of all equipment; provisions for the repair of any public infrastructure such as roads, ditches, and culverts;
2. a statement describing the service area and the primary customers of the WEF;
3. statements indicating that all utilities have been contacted relative to the location and construction of the WEF along with their responses and requirements;
4. technical details of the facility and individual wind turbines, including but not limited to height of all wind turbines, power generation capacity, long term maintenance and replacement requirements, survival wind speed, and any other information deemed appropriate by the developer and the professional staff of the Town and St. Joseph County;
5. an analysis of how the WEF will affect the operations of other facilities such as radio and television transmissions, cell phone transmissions, and radar transmissions;
6. a statement outlining the security arrangements that will be placed on the site;
7. an analysis of the maximum decibel levels to be anticipated at all property lines, and at all inhabitable structures within 300 feet of all property lines;
8. the maintenance plan that has been established for the WEF; and
9. a decommissioning plan outlining the method, timing and cost of the removal of one or more of the wind turbines upon the termination, abandonment, discontinuation, decommissioning or cessation of one or more of the wind turbines, or complete cessation of the operations of the WEF.

(c) A list of all adjacent property owners within 300 feet of the project boundary lines, along with stamped and addressed envelopes.

(d) Reports from the following agencies, and responses to any concerns raised by the respective agencies:

1. Indiana Department of Environmental Management;
2. Indiana Department of Natural Resources;
3. St. Joseph County Parks;
4. Historic Preservation Commission of St. Joseph County;
5. St. Joseph County Engineer;
6. St. Joseph County Surveyor;
7. St. Joseph County Health Department; and
8. The appropriate emergency response provider.

(e) Any project-specific agreements, such as public infrastructure improvements or a payment-in-lieu of taxes agreement, must be approved prior to final project approval.

(f) Liability Insurance covering bodily injury and property damage (naming the Town as an additional insurer) with limits of at least $2,000,000 per occurrence, and $5,000,000 in the aggregate, with a deductible of no more than $5,000.

(g) The requirement for liability insurance under Section 12.04 (G)(2)(f), above, shall not apply to a municipal corporation or a school corporation, as defined in IC 36-1-2-10 and 17 respectively, where any WECS within the WEF project site, is located at least one and one-half (1.5) times the height of the WECS from the nearest occupied structure.

(H) Wind Energy Facility - Abandonment, Discontinuation or Decommissioning of Wind Turbines and Removal of Wind Energy Facilities.

(1) Abandonment and/or decommissioning. Wind turbines and all associated equipment, buildings and foundations which have not been used for a continuous 24-month period from the last day of any known transmission of energy, shall be deemed abandoned and shall be removed from the site per the decommissioning plan. Maintenance events which require extended periods of time beyond a 24-month period shall be brought to the attention of the Zoning Administrator and Building Department.

(2) Security fund.

(a) The owner(s) of a WEF shall establish a security fund in the form of cash, bond or irrevocable letter of credit to secure the payment of removing the wind turbines and associated equipment, buildings and foundations that have been determined to be abandoned per sub-Section (H)(1), above, and from which to deduct fines and penalties for non-compliance with this Chapter or other applicable laws.

(b) The amount to be provided shall be 125% of the cost of demolition and removal of the WEF based upon a licensed engineer’s estimate of the cost of demolition.
and removal. Any reduction in the security fund provided, because of deductions of fines, penalties, or removal costs, shall be replenished to the total of the required amount within thirty (30) days after notice from the Town of the amount deducted and the deficiency created hereby.

(c) Within a reasonable period of time, not to exceed three months after the WEF is removed, any remaining funds on deposit with the Town pursuant to this Ordinance, after application and above all expenses provided for herein, shall be refunded to the appropriate owner or provider who created the security fund.

(3) Security fund, exemption. The requirement for a security fund under sub-Section 12.04 (H)(2), above, shall not apply to a municipal corporation or a school corporation as defined in IC 36-1-2-10 and 17 respectively.
Chapter 13  Reserved.
CHAPTER 14
FLOODPLAIN REGULATIONS
(Ord. 07-2015, Passed 12-2-2015)

Section 14.01 Statutory Authorization, Findings of Fact, Purpose, and Objectives.

A. Statutory Authorization. The Indiana Legislature has in IC 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Town Council of the Town of Osceola, Indiana does hereby adopt the following floodplain management regulations.

B. Findings of Fact.

1. The flood hazard areas of the Town of Osceola, Indiana are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages.

C. Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities;

2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

4. Control filling, grading, dredging, and other development which may increase erosion or flood damage;

5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and,
6. Make federal flood insurance available for structures and their contents in the Town of Osceola, Indiana by fulfilling the requirements of the National Flood Insurance Program.

D. Objectives. The objectives of this ordinance are:

1. To protect human life and health;

2. To minimize expenditure of public money for costly flood control projects;

3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

4. To minimize prolonged business interruptions;

5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains; and

6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.

Section 14.02 Prohibition on New Construction in the Floodplain.

A. Notwithstanding any other requirements in this Chapter, no new residential dwelling or non-residential structure in any zoning district, shall be permitted in any area designated as a floodplain by FEMA or the Indiana Department of Natural Resources (DNR). (Ord. No. 1-2016; 4/5/16)

B. Existing primary buildings and structures located in an area designated as a floodplain may be expanded only under the specific requirements of this Chapter. (Ord. No. 1-2016; 4/5/16)

C. New and existing accessory structures located in an area designated as a floodplain may be built and/or expanded only under the specific requirements of this Chapter. (Ord. No. 1-2016; 4/5/16)

Section 14.03 Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. In addition to the definitions contained in Chapter 19 Definitions, the following definitions shall apply to the Floodplain Regulations of this Chapter.

1. “A zone” means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The definitions are presented below:
a. **Zone A:** Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

b. **Zone AE and A1-A30:** Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30).

c. **Zone AO:** Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

d. **Zone AH:** Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

e. **Zone AR:** Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

f. **Zone A99:** Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.

2. “Accessory structure” (appurtenant structure) means a structure with a floor area 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

3. “Addition” (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

4. “Appeal” means a request for a review of the floodplain administrator’s interpretation of any provision of this ordinance.
5. “Area of shallow flooding” means a designated AO or AH Zone on the community’s Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

6. “Base Flood” means the flood having a one percent chance of being equaled or exceeded in any given year.

7. “Base Flood Elevation (BFE)” means the elevation of the one-percent annual chance flood.

8. “Basement” means that portion of a structure having its floor sub-grade (below ground level) on all sides.

9. “Boundary River” means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

10. “Boundary River Floodway” means the floodway of a boundary river.

11. “Building” - see "Structure."

12. “Community” means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

13. “Community Rating System (CRS)” means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

14. “Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

15. “D Zone” means unstudied areas where flood hazards are undetermined, but flooding is possible. Flood insurance is available in participating communities but is not required by regulation in this zone.

16. “Development” means any man-made change to improved or unimproved real estate including but not limited to:

   a. construction, reconstruction, or placement of a structure or any addition to a structure;
b. installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;

c. installing utilities, erection of walls and fences, construction of roads, or similar projects;

d. construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;

e. mining, dredging, filling, grading, excavation, or drilling operations;

f. construction and/or reconstruction of bridges or culverts;

g. storage of materials; or

h. any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

17. “Elevated structure” means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

18. “Elevation Certificate” is a certified statement that verifies a structure’s elevation information.

19. “Emergency Program” means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

20. “Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community’s first floodplain ordinance.


22. “Flood” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.
23. “Flood Boundary and Floodway Map (FBFM)” means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

24. “Flood Insurance Rate Map (FIRM)” means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

25. “Flood Insurance Study (FIS)” is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

26. “Flood Prone Area” means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See “Flood”)

27. “Flood Protection Grade (FPG)” is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (See “Freeboard”)

28. “Floodplain” means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.

29. “Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

30. “Floodplain management regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.

31. “Floodproofing (dry floodproofing)” is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.
32. “Floodproofing certificate” is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.

33. “Floodway” is the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

34. “Freeboard” means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

35. “Fringe” is those portions of the floodplain lying outside the floodway.

36. “Hardship” (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Area Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one’s neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

37. “Highest adjacent grade” means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

38. “Historic structures” means any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

39. “Increased Cost of Compliance (ICC)” means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.

40. “Letter of Final Determination (LFD)” means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.
41. “Letter of Map Change (LOMC)” is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F). The definitions are presented below:

   a. “Letter of Map Amendment (LOMA)” means an amendment to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property-specific elevation data. A LOMA is only issued by FEMA.

   b.“Letter of Map Revision (LOMR)” means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

   c.“Letter of Map Revision Based on Fill (LOMR-F)” means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA’s determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

42. “Lowest adjacent grade” means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

43. “Lowest floor” means the lowest elevation described among the following:

   a. The top of the lowest level of the structure.

   b. The top of the basement floor.

   c. The top of the garage floor, if the garage is the lowest level of the structure.

   d. The top of the first floor of a structure elevated on pilings or pillars.

   e. The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:

      i. the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;

      ii. the total net area of all openings shall be at least one (1) square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
iii. such enclosed space shall be usable solely for the parking of vehicles and building access.

44. “Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

45. “Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

46. “Market value” means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

47. “Mitigation” means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

48. “National Flood Insurance Program (NFIP)” is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

49. “National Geodetic Vertical Datum (NGVD) of 1929” as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

50. “New construction” means any structure for which the “start of construction” commenced after the effective date of the community’s first floodplain ordinance.

51. “Non-boundary river floodway” means the floodway of any river or stream other than a boundary river.

52. “North American Vertical Datum of 1988 (NAVD 88)” as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

53. “Obstruction” includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.
54. “One-percent annual chance flood” is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See “Regulatory Flood”.

55. “Physical Map Revision (PMR)” is an official republication of a community’s FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

56. “Public safety and nuisance” means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

57. “Recreational vehicle” means a vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

58. “Regular program” means the phase of the community’s participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

59. “Regulatory flood” means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Section 14.04 B. of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", “One-Percent Annual Chance Flood”, and “100-Year Flood”.

60. “Repetitive loss” means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.

61. “Section 1316” is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

62. “Special Flood Hazard Area (SFHA)” means those lands within the jurisdiction of the Town of Osceola, Indiana subject to inundation by the regulatory flood. The SFHAs of the
Town of Osceola are generally identified as such on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map dated January 6, 2011 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO).

63. “Start of construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

64. “Structure” means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

65. “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

66. “Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred “repetitive loss” or “substantial damage” regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements. (Ord. No. 1-2016; 4/5/16)

67. “Suspension” means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

68. “Variance” is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.
69. “Violation” means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

70. “Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

71. “X zone” means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

72. “Zone” means a geographical area shown on a FHBM or FIRM that reflects the severity or type of flooding in the area.

73. “Zone A” (see definition for A zone).

74. “Zone B, C, and X” means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C).

Section 14.04 General Provisions.

A. Lands to Which This Ordinance Applies. This ordinance shall apply to all SFHAs and known flood prone areas within the jurisdiction of the Town of Osceola, Indiana.

B. Basis for Establishing Regulatory Flood Data. This ordinance’s protection standard is the regulatory flood. The best available regulatory flood data is listed below:

1. The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the Town of Osceola, Indiana shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of St. Joseph County, Indiana and Incorporated Areas dated January 6, 2011 and the corresponding Flood Insurance Rate Map dated January 6, 2011 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.

2. The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the Town of Osceola, Indiana, delineated as an "A Zone" on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map dated January 6, 2011 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency
Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.

3. In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community’s known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

4. Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

C. Establishment of Floodplain Development Permit. A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

D. Compliance. No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

E. Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

F. Discrepancy between Mapped Floodplain and Actual Ground Elevations.

1. In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.

2. If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.

3. If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA.
G. Interpretation. In the interpretation and application of this ordinance all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and,
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

H. Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the Town of Osceola, Indiana, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

I. Penalties for Violation. Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Ordinance of the Town of Osceola, Indiana. All violations shall be punishable by a fine not exceeding $100.

1. A separate offense shall be deemed to occur for each day the violation continues to exist.
2. The Town of Osceola Zoning Administrator shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
3. Nothing herein shall prevent the Town of Osceola, Indiana from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Section 14.05 Administration.

A. Designation of Administrator. The Town Council of the Town of Osceola, Indiana hereby appoints the Zoning Administrator to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

B. Permit Procedures. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or
proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

1. Application Stage.

   a. A description of the proposed development;

   b. Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams;

   c. A legal description of the property site;

   d. A site development plan showing existing and proposed development locations and existing and proposed land grades;

   e. Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD;

   f. Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed; and

   g. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. See Section 14.05 C. 2. f. for additional information).

2. Construction stage.

   a. Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. The Floodplain Administrator shall review the lowest floor elevation survey data submitted. The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project. Any work undertaken prior to submission of the elevation certification shall be at the applicant’s risk.

   b. Upon establishment of the floodproofed elevation of a floodproofed structure, it shall be the duty of the applicant to submit to the Floodplain Administrator a floodproofing certificate. Certification shall be prepared by or under the direct supervision of a registered professional engineer and certified by same. (The Floodplain Administrator shall review the floodproofing certification submitted.) The applicant shall correct any deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the floodproofing
certification or failure to make correction required shall be cause to issue a stop-work order for the project. *(Ord. No. 1-2016; 4/5/16)*

3. Finished Construction. Upon completion of construction, an elevation certification (FEMA Elevation Certificate Form 81-31 or any future updates) which depicts the “as-built” lowest floor elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, floodproofing certification (FEMA Floodproofing Certificate Form 81-65 or any future updates) is required to be submitted by the applicant to the Floodplain Administrator.

C. Duties and Responsibilities of the Floodplain Administrator.

1. The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

2. Duties and Responsibilities of the Floodplain Administrator shall include, but not be limited to:

   a. Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied;

   b. Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations;

   c. Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Section 14.06 D. and Section 14.06 F. 1. of this ordinance, and maintain a record of such authorization (either copy of actual permit or floodplain analysis/regulatory assessment); *(Ord. No. 04-2016; 8/2/16)*

   d. Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit

   e. Maintain and track permit records involving additions and improvements to residences located in the floodway;

   f. Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA;

   g. Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation),
federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance;

h. Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community;

i. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;

j. Review certified plans and specifications for compliance;

k. Verify and record the actual elevation of the lowest floor (including basement) of all substantially improved structures, in accordance with Section 14.05 B.; (Ord. No. 1-2016; 4/5/16)

l. Verify and record the actual elevation to which any substantially improved structures have been floodproofed, in accordance with Section 14.05 B.; (Ord. No. 1-2016; 4/5/16)

m. Stop Work Orders

i. Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.

ii. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

n. Revocation of Permits

i. The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

ii. The floodplain administrator may revoke a permit upon determination by the floodplain administrator that alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance. (Ord. No. 1-2016; 4/5/16)

Section 14.06 Provisions for Flood Hazard Reduction.

A. General Standards.

In all SFHAs and known flood prone areas the following provisions are required:
1. Substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;

2. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;

3. Substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG;

4. Substantial improvements shall be constructed by methods and practices that minimize flood damage;

5. Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG;

6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

9. Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “Substantial Improvement” as contained in this ordinance; (Ord. No. 1-2016; 4/5/16)

10. Whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill or structure below the BFE shall be compensated for and balanced by an equivalent volume of excavation taken below the BFE. The excavation volume shall be at least equal to the volume of storage lost (replacement ratio of 1 to 1) due to the fill or structure.

   a. The excavation shall take place in the floodplain and in the same property in which the authorized fill or structure is located;

   b. Under certain circumstances, the excavation may be allowed to take place outside of but adjacent to the floodplain provided that the excavated volume will be below the
regulatory flood elevation, will be in the same property in which the authorized fill or structure is located, will be accessible to the regulatory flood water, will not be subject to ponding when not inundated by flood water, and that it shall not be refilled;

c. The excavation shall provide for true storage of floodwater but shall not be subject to ponding when not inundated by flood water;

d. The fill or structure shall not obstruct a drainage way leading to the floodplain;

e. The grading around the excavation shall be such that the excavated area is accessible to the regulatory flood water;

f. The fill or structure shall be of a material deemed stable enough to remain firm and in place during periods of flooding and shall include provisions to protect adjacent property owners against any increased runoff or drainage resulting from its placement; and,

g. Plans depicting the areas to be excavated and filled shall be submitted prior to the actual start of construction or any site work; once site work is complete, but before the actual start of construction, the applicant shall provide to the Floodplain Administrator a certified survey of the excavation and fill sites demonstrating the fill and excavation comply with this article.

B. Specific Standards.

In all SFHAs, the following provisions are required:

1. In addition to the requirements of Section 14.06 A., all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:

   a. Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land);

   b. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred;

   c. Installing a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; (Ord. No. 1-2016; 4/5/16)

   d. Reconstruction or repairs made to a repetitive loss structure; and
20

Chapter 14
Floodplain Regulations

e. Addition or improvement made to any existing structure with a previous addition or improvement constructed since the community’s first floodplain ordinance.

2. Residential Structures. Substantial improvement of any residential dwelling (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Section 14.06 B. 4. (Ord. No. 1-2016; 4/5/16)

3. Non-Residential Structures. Substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Section 14.06 B. 4. Structures located in all “A Zones” may be floodproofed in lieu of being elevated if done in accordance with the following:

a. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the floodplain administrator as set forth in Section 14.05 C. 2. 1.

b. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

4. Elevated Structures.

a. Substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

b. Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

i. Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).

ii. The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.
iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

iv. Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

v. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

vi. The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

vii. Property owners shall be required to execute and record with the structure’s deed a non-conversion agreement declaring that the area below the lowest floor (where the interior height of the enclosure exceeds 6 feet) shall not be improved, finished or otherwise converted; the community will have the right to inspect the enclosed area. The non-conversion agreement shall be recorded in the office of the St. Joseph County Recorder.

5. Structures Constructed on Fill. A residential or nonresidential structure may be re-constructed on a permanent land fill in accordance with the following (Ord. No. 1-2016; 4/5/16):

a. The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.

b. The fill shall extend 10 feet beyond the foundation of the structure before sloping below the BFE.

c. The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.

d. The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

e. The top of the lowest floor including basements shall be at or above the FPG.

f. Fill shall be composed of clean granular or earthen material.

6. Standards for Manufactured Homes. Manufactured homes to be substantially improved must meet one of the following requirements (Ord. No. 1-2016; 4/5/16):
Chapter 14  
Floodplain Regulations

a. These requirements apply to all manufactured homes to be placed on a site outside a manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood (Ord. No. 1-2016; 4/5/16):

i. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

ii. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Section 14.06 B. 4.

iii. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

b. These requirements apply to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood:

i. The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

ii. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Section 14.06 B. 4.

iii. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

c. Recreational vehicles placed on a site shall either (Ord. No. 1-2016; 4/5/16):

i. be on site for less than 180 days; or

ii. be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions).

7. Accessory Structures. Relief to the elevation or dry floodproofing standards may be granted for accessory structures. Such structures must meet the following standards:
a. Shall not be used for human habitation.

b. Shall be constructed of flood resistant materials.

c. Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.

d. Shall be firmly anchored to prevent flotation.

e. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.

f. Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Section 14.06 B. 4.

8. Above Ground Gas or Liquid Storage Tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.

C. Critical Facility. Re-Construction of critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Critical facilities re-constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible. (Ord. No. 1-2016; 4/5/16)

D. Standards for Identified Floodways.

1. Located within SFHAs, established in Section 14.04 B. of this ordinance, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of non-substantial additions/improvements to residences in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources).
Chapter 14
Floodplain Regulations

2. No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Section 14.06 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community’s more restrictive regulations (if any) shall take precedence.

3. No development shall be allowed, which acting alone or in combination with existing or future development, that will adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse affect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

4. For all projects involving channel modifications or fill (including levees) the Town of Osceola, Indiana shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

E. Standards for Identified Fringe. If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Section 14.06 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

F. Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringes.

1. Drainage area upstream of the site is greater than one square mile:

a. If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

b. No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the 100 year flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.
Chapter 14
Floodplain Regulations

25

c. Once the Floodplain Administrator has received the proper permit for construction in a floodway (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Section 14.06 of this ordinance have been met.

2. Drainage area upstream of the site is less than one square mile:

a. If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

b. Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Section 14.06 of this ordinance have been met.

c. The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the regulatory flood more than 0.14 of one foot and shall not increase flood damages or potential flood damages.

G. Standards for Flood Prone Areas. All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet general standards as required per Section 14.06.

Section 14.07 Variance Procedures.

A. Designation of Variance and Appeals Board. The St. Joseph County Area Board of Zoning Appeals (ABZA) shall hear and decide appeals and requests for variances from requirements of this ordinance.

B. Duties of Variance and Appeals Board. The board (ABZA) shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board (ABZA) may appeal such decision to the St. Joseph County Circuit or Superior Court.

C. Variance Procedures. In passing upon such applications, the board (ABZA) shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

1. The danger of life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

3. The importance of the services provided by the proposed facility to the community;

4. The necessity of the facility to a waterfront location, where applicable;

5. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

6. The compatibility of the proposed use with existing and anticipated development;

7. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

8. The safety of access to the property in times of flood for ordinary and emergency vehicles;

9. The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and,

10. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

D. Conditions for Variances.

1. Variances shall only be issued when there is:
   a. A showing of good and sufficient cause;
   
   b. A determination that failure to grant the variance would result in exceptional hardship; and,
   
   c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

2. No variance for a residential use within a floodway subject Section to 14.06 D. or Section 14.06 F. 1. of this ordinance may be granted. (Ord. No. 04-2016; 8/2/16)

3. Any variance granted in a floodway subject to Section 14.06 D. or Section 14.06 F. 1. of this ordinance will require a permit from the Indiana Department of Natural Resources. (Ord. No. 04-2016; 8/2/16)
Chapter 14
Floodplain Regulations

4. Variances to the Provisions for Flood Hazard Reduction of Section 14.06 B. of this ordinance, may be granted only when substantial improvement or reconstruction of an existing structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade. (Ord. No. 04-2016; 8/2/16)

5. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

6. Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

7. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (see Section 14.07 E.).

8. The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (see Section 14.07 E.).

E. Variance Notification. Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the flood protection grade shall be given written notice over the signature of a community official that:

1. The issuance of a variance to construct a structure below flood protection grade will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and;

2. Such construction below the flood protection grade increases risks to life and property. A copy of the notice shall be recorded by the owner in the office of the St. Joseph County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

F. Historic Structure. Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.

G. Special Conditions. Upon the consideration of the factors listed in Section 14.07 and the purposes of this ordinance, the St. Joseph County Area Board of Zoning Appeals may attach
such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**Section 14.08 Severability.** If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.
CHAPTER 15
ADMINISTRATION

Section 15.01 Town Council.

In order to effectuate the purpose of this Ordinance regarding the implementation of the Comprehensive Plan and this Ordinance, the Town Council shall, to the fullest extent permitted by applicable law, including without limitation IC 36-7-4 et. seq. have the powers and duties to:

(A) Approve, reject or amend a comprehensive plan, or segment thereof, certified to it by the Area Plan Commission.

(B) Initiate amendments to the text of this Ordinance.

(C) Adopt, reject or amend proposals to amend or partially repeal the text of this Ordinance.

(D) Initiate amendments to the text of the Town Subdivision Control Ordinance.

(E) Adopt, reject or amend proposals to amend or partially repeal the text of the Town Subdivision Control Ordinance.

(F) Adopt or reject proposals to amend zone maps.

(G) Adopt, reject or modify a PUD District Ordinance.

(H) Approve or disapprove all petitions for special exception uses after receiving such petitions from the Board of Zoning Appeals with a favorable recommendation, unfavorable recommendation, or no recommendation.

(I) Such additional powers and duties as may be set forth for the Town Council elsewhere in this Ordinance or Indiana state law.

Section 15.02 Area Plan Commission.

(A) Establishment. The area planning law is hereby re-adopted and the Area Plan Commission is hereby re-established as the plan commission for the Town of Osceola, Indiana, in accordance with Indiana Code 36-7-4-200 et seq.

(B) Membership, Qualifications and Terms. The membership of the Area Plan Commission, the qualification of its members and the terms of membership shall be in accordance with Indiana Code 36-7-4-200 et seq.
(C) Duties and Powers. The Area Plan Commission is hereby vested with the duties and powers imposed upon and granted to an Area Plan Commission under the area planning law, including, without limitation, the powers and duties listed below. To effectuate the purposes of this Ordinance, the Area Plan Commission may, to the fullest extent permitted by applicable laws:

1. Supervise and make rules for the administration of the affairs of the planning department;

2. Prescribe uniform rules pertaining to investigations and hearings, and other matters authorized by Indiana planning and zoning laws;

3. Keep a complete record of all departmental proceedings;

4. Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the planning department;

5. Prepare, publish and distribute reports, ordinances and other material related to the Area Plan Commission activities authorized by Indiana state law or this Ordinance;

6. Adopt a seal;

7. Certify to all official acts;

8. Supervise the fiscal affairs of the planning department;

9. Prepare and submit an annual budget and be limited in all expenditures to the provisions made for expenditures by the legislative bodies of participating municipalities or the Board of Commissioners of St. Joseph County;

10. Prescribe the qualifications of, with the consent of the Executive Director, fix the compensation of the employees of the planning department, which compensation shall conform to salaries and compensations fixed before that time by the Board of Commissioners of St. Joseph County;

11. Delegate authority to its employees to perform ministerial acts in all cases except where final action of the Area Plan Commission is necessary;

12. Designate a hearing examiner or a committee of the commission to conduct any public hearing required to be held by the Area Plan Commission;
(13) Appoint a plat committee to hold hearings on and approve plats and replats on behalf of the *Area Plan Commission*;

(14) Make recommendations to the *Council* concerning:

(a) The adoption of the *Comprehensive Plan* and amendments to the *Comprehensive Plan*;

(b) The adoption of this Ordinance, a text amendment to this Ordinance, a replacement zoning ordinance, or the Town of Osceola Subdivision Control Ordinance;

(c) The adoption or amendment of a *PUD* District Ordinance; and,

(d) Zone Map Changes;

(15) Render decisions concerning and approve plats or replats of subdivisions;

(16) Assign street numbers to *lots* and *structures* or renumber *lots* and *structures* on streets or highways within the *Area Plan Commission*’s jurisdiction to conform with the numbers of *structures* on streets within cities within St. Joseph County, Indiana. The *Area Plan Commission* hereby delegates the assignment of street numbers to the *Town Clerk-Treasurer*;

(17) The naming or renaming of streets when performed in connection with a plat or replat (the naming or renaming of streets within the corporate limits of the *Town*, when not performed in connection with a plat or replat, shall be within the jurisdiction of the *Council*);

(18) Render decisions concerning development plans and amendments to development plans;

(19) Establish advisory committees of citizens interested in problems of planning and zoning which shall report to the *Area Plan Commission* and shall make inquiries and reports only on the subject and problems specified in the resolution establishing the advisory committee of citizens by the *Area Plan Commission*;

(20) Establish an executive committee which may act in the name of the *Area Plan Commission* as set forth in IC 36-7-4-408;

(21) Negotiate for grants-in-aid and agree to terms and conditions attached to such grants-in-aid;
(22) Establish a schedule of reasonable fees to defray the administrative costs connected with:

(a) Processing and hearing administrative appeals and petitions for zone map change, special exception uses, variances, planned unit developments, and development plan approvals;

(b) Issuing improvement location permits; and,

(c) Other official actions taken under this Ordinance;

(23) Invoke any legal, equitable, or special remedy available under this Ordinance or applicable law for the enforcement of the provisions of this Ordinance or actions taken hereunder;

(24) Exercise all powers conferred on it by state law, local ordinance, or rule in the manner so prescribed. This Section shall not be construed as a limitation on those powers.

(D) Commitments.

(1) Requirement of Commitments by the Area Plan Commission.

(a) The Area Plan Commission may, when in the discretion of the Area Plan Commission it is deemed necessary either to assure the compatibility of a proposed development with surrounding properties, or to minimize the potential for the occurrence of detrimental effects from any attributes of a proposed development on surrounding properties, require or allow the owner of a parcel of property to make written commitments concerning the use or development of the subject property in connection with:

1. A development plan approval as provided for in this Ordinance;

2. A recommendation to the Council regarding a zone map change to any district classification contained in this Ordinance;

3. A recommendation to the Council regarding a PUD District Ordinance;

4. A secondary approval of a PUD; or,

5. A modification of permitted uses or development requirements of a PUD.
(b) The commitments shall be reduced to writing in recordable form and signed by the owner(s) of the real estate. The commitments shall be in effect for:

1. As long as the zone map applicable to the parcel remains unchanged;

2. The parcel is designed as a PUD under Chapter 7 Planned Unit Development District of this Ordinance; or,

3. Modified or terminated as provided below.

(c) Commitments required or allowed in connection with a zone map change or the adoption of a PUD District Ordinance shall be voted upon by the Council as certified by the Area Plan Commission.

(d) The commitments shall authorize their recording by staff in the office of the Recorder of St. Joseph County upon the final approval of the applicable petition. The staff shall be reimbursed by the petitioner for any and all fees associated with the recording of said commitments.

(e) Following the recording of the commitments, staff shall return the original recorded commitments to petitioner and shall retain a copy of the recorded commitments in its file.

(f) The Area Plan Commission, Town Attorney, Zoning Administrator, appropriate enforcement official, owners of all parcels of ground located within three-hundred (300) feet of the real estate and all owners of real estate within the area included in the petition who were not petitioners for approval, and other specially affected persons designated in such commitments shall be entitled to enforce such commitments pursuant to Indiana Code 36-7-4-1015 or as otherwise provided by applicable law.

(g) The commitments required or allowed by the Area Plan Commission shall be in substantially the form set forth by resolution of the Area Plan Commission.

(2) Modification or Termination of Commitments by the Area Plan Commission.

(a) Commitments required or allowed by the Area Plan Commission may be modified or terminated by a decision of the Area Plan Commission.

(b) Any modification or termination of the commitments shall not be effective until:

1. Reduced to writing;
2. Approved by the *Area Plan Commission*;

3. Executed and notarized by the present owner(s) of the real estate; and,


(c) The modification or termination of *commitments* shall be in substantially the form set forth by resolution of the *Area Plan Commission*.

(d) Procedures to be followed regarding form of filing, public hearing and notice, and reasons for modification or termination shall be those set forth in sub-Section 16.07 Modification or Termination of Commitments.

Section 15.03 Board of Zoning Appeals.

(A) Establishment and Jurisdiction. The *Board of Zoning Appeals* for St. Joseph County is hereby re-established in accordance with Indiana Code 36-7-4-900 et seq. The *Board of Zoning Appeals* of St. Joseph County shall have exclusive authority over all matters set forth under Indiana Code 36-7-4-900 et seq., within the corporate limits of the *Town*.

(B) Membership, Qualifications and Terms. The membership of the *Board of Zoning Appeals*, the qualification of its members and the terms of membership shall be in accordance with Indiana Code 36-7-4-900 et seq.

(C) Duties and Powers. The *Board of Zoning Appeals* shall have the duty and power to:

(1) Hear and determine appeals from and review any order, requirement, decision, or determination made by *staff*, hearing officer or administrative official under this Ordinance;

(2) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Area Plan Commission* in relation to the enforcement of this Ordinance;

(3) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Area Plan Commission* in relation to the enforcement of those provisions of this Ordinance requiring the procurement of an *improvement location permit* or a *certificate of occupancy*;

(4) Hear, and make a favorable recommendation, unfavorable recommendation or no recommendation to the *Council* on all *special exception uses* in accordance with the provisions of sub-Section 15.03 (I) Special Exceptions, below;
Chapter 15
Administration

(5) Hear and determine all variances from development standards of this ordinance; and

(6) Hear and determine all conditional uses.

(D) Conditions.

(1) The Board of Zoning Appeals, in connection with its making of a favorable recommendation, unfavorable recommendation or no recommendation to the Council regarding the approval of a special exception use, may recommend that the Council impose certain reasonable conditions as a part of the Council's approval of any special exception use.

(2) Such conditions may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the findings of fact determinations.

(E) Amendments. The Board of Zoning Appeals, in connection with making a determination on a variance of development standards, may accept amendments to a petition which, in the sole discretion of the Board of Zoning Appeals, are necessary for the Board of Zoning Appeals to make the determination and findings of fact required by sub-Section 15.03 (H) Variance of Development Standards, below.

(F) Commitments.

(1) The Board of Zoning Appeals may recommend or the Council may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel in the case of a petition for a special exception use.

(2) The Board of Zoning Appeals may permit or require the owner of a parcel of property to make a written commitment concerning the development of that parcel in the case of a petition for a variance of development standards.

(3) Such commitments may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the findings of fact determinations.

(4) All such commitments shall be in recordable form and shall be recorded in the office of the St. Joseph County Recorder and shall take effect upon the granting of the special exception use or variance. A recorded commitment shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.
Chapter 15
Administration

(5) The commitments shall be in substantially the form set forth in Exhibit "C" of this Ordinance.

(6) A recorded commitment may be modified or terminated only by a decision of the Board of Zoning Appeals.

(7) The modification or termination of commitments shall be in substantially the form set forth in Exhibit "D" of this Ordinance.

(8) Procedures to be followed regarding form of filing, public hearing and notice, and reasons for modification or termination shall be those set forth in Section 16.07 Modification or Termination of Commitments.

(9) By recommending, permitting or requiring commitments, the Board of Zoning Appeals does not obligate itself to make a favorable recommendation nor does the Council obligate itself to approve or deny any request.

(10) This Section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

(G) Rules.

(1) The Board of Zoning Appeals shall adopt rules concerning: the filing of appeals; applications for special exception uses and variances; the giving of notice; the determination of interested parties to receive notice; the conduct of hearings; the creation, form, recording, modification, enforcement and termination of commitments; and, the designation of which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

(2) Rules adopted by the Board of Zoning Appeals shall be printed and made available to all applicants and other interested persons.

(H) Variance of Development Standards. A variance from any of the development standards of this Ordinance may only be approved upon the Board of Zoning Appeals making a written determination and adopting appropriate Findings of Fact, based upon the evidence presented at a public hearing, that:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community;

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
(3) The strict application of the terms of this Ordinance would result in practical difficulties in the use of the property.

(I) Special Exception Uses.

(1) Statement of Purpose. Certain land uses, while they may be generally appropriate in certain districts and under certain circumstances, may have characteristics and locational impacts which, if inappropriately located, may have a detrimental effect upon other land uses within the district and the Town. It is therefore recognized that such land uses should be regulated in order to preserve property values, as well as promote the public health, safety, comfort, community moral standards, convenience and general welfare of the Town.

(2) Uses Permitted by Special Exception Use. Only those uses identified in each individual district as uses permitted by special exception use shall be permitted by special exception use in each district.

(3) Grant of a Special Exception Use.

(a) The Board of Zoning Appeals is hereby authorized to hear and make a favorable recommendation, unfavorable recommendation or no recommendation to the Council on a petition for a special exception use.

(b) The Council shall, within sixty (60) days of a recommendation by the Board of Zoning Appeals, vote on the petition for a special exception use.

(c) All petitions for a special exception use shall comply with the following requirements:

1. Petition for Special Exception Use. A petition for special exception use shall be initially filed with the Board of Zoning Appeals in accordance with the requirements for the filing of a variance, except as such requirements may be modified in this Section. Such petition shall include proposed detailed findings of fact pursuant to sub-Section 15.03 (I)(4) Findings of Fact for a Special Exception Use, below, in support of the determinations required to be made.

2. Waiver of Development Standards. A petition for special exception may contain a request to waive development standards of the district determined to be inappropriate for the individual special exception use. The waiver may only be approved if such waiver is specifically requested in said petition and specifically approved at the public hearing. Any development standards which are waived in this manner shall require additional findings as specified in Section 15.03 (H) – Variance of
Development Standards, above, for the grant of a variance of *development standards*.

3. **Basis of Review of a Special Exception Use.**
   a. In reviewing a *special exception use* petition with regard to compliance with the required findings of fact, the *Board of Zoning Appeals* and *Council* shall give consideration to the particular needs and circumstances of each *special exception use* application and shall examine the following items as they relate to the proposed *use*:
      i. Topography and other natural site features;
      ii. Zoning of the site and surrounding properties;
      iii. Driveway locations and street access;
      iv. On-site and off-site accommodations for vehicular and pedestrian circulation patterns;
      v. Amount, location and design of parking areas and loading areas;
      vi. Building character, including height, intensity, materials and architecture;
      vii. Landscaping, screening and buffering of adjacent properties;
      viii. Compatibility of the proposed use, site design and architecture with the district in which the *use* is proposed to be located;
      ix. Extent to which the proposed use, site design and architecture comply with the regulations and development standards that would be applicable if the site were zoned to an Office Buffer District, Commercial District or Industrial District of this Ordinance which would permit the proposed use as a *primary use*;
      x. Open space and other site amenities; and,
      xi. Availability and adequacy of streets, sanitary facilities, potable water, storm water management system and other utilities.
b. The Board of Zoning Appeals and the Council shall find that the above items are dealt with appropriately by the petition for special exception use such that Sections 15.03 (I)(4) Findings of Fact for a Special Exception Use, below, and 15.03 (I)(5) Requirements for the Grant of a Special Exception Use, below, are complied with.

c. In addition to the requirements of this Section 15.03 (I)(3), special exception uses shall be subject to any additional development standards as determined by the Council.

(4) Findings of Fact for a Special Exception Use. A special exception use may only be granted upon making a written determination and adopting appropriate findings of fact, based upon the evidence presented at a public hearing, that:

(a) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;

(b) The proposed use will not injure or adversely affect the use of the adjacent area or property values therein;

(c) The proposed use will be consistent with the character of the district in which it is located and the land uses authorized therein; and,

(d) The proposed use is compatible with the recommendations of the Town Comprehensive Plan.

(5) Requirements for the Grant of a Special Exception Use. The grant of a special exception use shall comply with the following requirements:

(a) The proposed use shall conform to all development standards of the applicable zoning district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above).

(b) The proposed use shall conform to all conditions or commitments attached to the grant of the special exception use.

(J) Other Powers. The Board of Zoning Appeals shall exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This Section shall not be construed as a limitation on such powers.
Section 15.04 Staff Agencies.

(A) Establishment. The Office of the Area Plan Commission of St. Joseph County is hereby re-established as the planning department for the Town.

(B) Administration of Planning and Zoning Authority. The Office of the Area Plan Commission is hereby delegated the authority to perform all ministerial acts of the Area Plan Commission not required by law to be performed by the Area Plan Commission or the Board of Zoning Appeals within the Town.

(C) Duties and Powers of the Executive Director.

It shall be the duty of the Executive Director:

(1) To supervise the general administration of the Planning Department;

(2) To receive and review all applications required by this Ordinance for zone map changes, development plan approvals and planned unit developments;

(3) When requested by the Area Plan Commission or Board of Zoning Appeals, or when the interests of the Town so require, make investigations in connection with matters referred to in this Ordinance and render written reports on the same;

(4) To keep the records of the Planning Department, including, without limitation, records of applications and reports rendered. The Executive Director shall maintain records of all final determinations, decisions and recommendations of the Area Plan Commission;

(5) To transmit to the Area Plan Commission the recommendation of the Planning Department on all applications, petitions, or matters requiring official action by the Area Plan Commission;

(6) To transmit to the Board of Zoning Appeals the recommendation of the planning department on applications, petitions, or matters requiring official action by the Board of Zoning Appeals;

(7) To maintain the Official Zone Maps and designate on the Official Zone Maps all map amendments granted under the terms of this Ordinance;

(8) To provide and maintain information for the public relative to all matters arising out of this Ordinance;
(9) To designate staff to assist in the daily administration of the duties and responsibilities set forth in this Ordinance;

(10) To perform such other duties as the Area Plan Commission may direct in accordance with the provisions of this Ordinance.

(D) Duties and Powers of the Zoning Administrator. The Zoning Administrator is hereby charged with the administration of this Ordinance and, in particular, shall have the jurisdiction, authority and duties described below:

(1) To conduct preliminary consultations with potential applicants regarding development proposals regulated by this Ordinance;

(2) To receive and review all applications required by this Ordinance for determination by the Board of Zoning Appeals;

(3) To review all improvement location permit applications for compliance with the provisions of this Ordinance; and

(4) To issue improvement location permits upon a determination that such permit application is in full compliance with all terms and provisions of this Ordinance, the Town Subdivision Control Ordinance, and all other duly adopted applicable ordinances, rules or regulations of the Town.

(E) Duties and Powers of the Town Clerk-Treasurer. The Town Clerk-Treasurer shall maintain records including, without limitation, records of all permits issued, certificates issued, and notice or orders issued.

(F) Duties and Powers of the St. Joseph County/South Bend Building Department. The St. Joseph County/South Bend Building Department shall have the jurisdiction, authority and duties described below:

(1) To maintain records including, without limitation, records of all applications before the Board of Zoning Appeals, and final determinations, decisions and recommendations of the Board of Zoning Appeals; and

(2) To transmit to the Board of Zoning Appeals technical advice on all applications, petitions, or matters requiring official action by the Board of Zoning Appeals.
CHAPTER 16

DEVELOPMENT REVIEW PROCEDURES.

Section 16.01 Intent.

The development review procedures for the use Town are intended to provide for the protection of the public health, safety, morals and general welfare of the residential and business citizens of the Town by providing for the thorough review of all permit applications and development petitions so that informed decisions regarding such permit applications and development petitions may be rendered while balancing the needs of the development community for the timely review of those permit applications and development petitions.

Section 16.02 Improvement Location Permits.

(A) Improvement location permit Required. No building, structure, improvement, sign or use of land may be altered, changed, enlarged, placed, erected or located, unless the building, structure, improvement, sign or use and its location conform to the provisions of this Ordinance and an improvement location permit for the alteration, change, placement, erection or location of such building, structure, improvement, sign or use has been issued.

(B) Duration of Improvement location permit.

(1) An improvement location permit shall be valid for a period of one (1) year after date of issuance.

(2) The Zoning Administrator shall have the power to extend the period of validity of any improvement location permit one or more times, provided, however, the total time period of all extension(s) shall not exceed six (6) months.

(C) Review of Improvement location permit Application.

(1) Improvement location permits for Single Family and Two Family Dwellings and Related Accessory Buildings or Structures.

The Zoning Administrator may take up to five (5) business days to study an application for an improvement location permit. During such five (5) business day period, the Zoning Administrator may consult with other Staff or appropriate technical consultants. If, after such five (5) day period, the Zoning Administrator has not requested any additional information or stated any objections in writing to the applicant, and the proposed building, structure or improvement, and the proposed use...
conform in all respects to the provisions of this Ordinance, the Zoning Administrator shall issue the improvement location permit.

(2) Improvement location permits for All Multifamily, Commercial, Industrial or Special Exception Use Buildings, Structures, Improvements or Uses; Signs; and Accessory Buildings, Structures or Improvements Related to Multifamily, Commercial, Industrial or Special Exception Uses.

The Zoning Administrator may take up to fifteen (15) business days to study the application for an improvement location permit. During such fifteen (15) day period, the Zoning Administrator may consult with other Staff or appropriate technical consultants. If, after such fifteen (15) day period, the Zoning Administrator has not requested any additional information or stated any objections in writing to the applicant, and the proposed building, structure, improvement or sign, and the proposed use conform in all respects to the provisions of this Ordinance, the Zoning Administrator shall issue the improvement location permit.

(3) Improvement location permits for Buildings, Structures, Improvements, Signs or Uses Authorized by Variance.

In addition to the requirements above, an improvement location permit for a building, structure, improvement, sign or use authorized by variance shall not be issued until:

(a) Receipt by the Zoning Administrator of written notice from the Board of Zoning Appeals that the application therefore has been approved by the Board of Zoning Appeals; and,

(b) A determination by the Zoning Administrator that said improvement location permit application is in full compliance with the terms of any conditions which may have been imposed by the Board of Zoning Appeals and commitments which may have been made by the owner.

(4) Improvement location permits for Buildings, Structures, Improvements, Signs or Uses Authorized by Special Exception Use. In addition to the requirements above, an improvement location permit for a building, structure, improvement, sign or use authorized by special exception use shall not be issued until:

(a) Receipt by the Zoning Administrator of written notice from the Council that the application therefore has been approved by the Council; and,

(b) A determination by the Zoning Administrator that said improvement location permit application is in full compliance with the terms of any conditions which
Chapter 16
Development Review Procedures

may have been imposed by the Council and commitments which may have been made by the owner.

(D) Appeal of Determination. Any determination by the Zoning Administrator concerning the issuance of an improvement location permit may be appealed to the Board of Zoning Appeals by any party claiming to be adversely affected by that decision.

(E) Record of Permits. A record of all improvement location permits shall be kept on file in the Office of the Zoning Administrator and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building or land affected and shall be available for public inspection and copying as provided by applicable State law.

(F) Amended Improvement Location Permit. When a builder, developer or owner of any building, structure, improvement or sign for which an improvement location permit has been obtained, for any reason, proposes that the construction of said building, structure, improvement or sign deviate from the plans filed with the improvement location permit application and approved by the Zoning Administrator, the builder, developer or owner shall make application for an amended Improvement location permit. The Zoning Administrator shall review the application for the Amended improvement location permit in accordance with the procedures set forth above to determine compliance of the amended improvement location permit application with the provisions of this Ordinance and any other applicable conditions, commitments or restrictions. If such amended improvement location permit application is found to be in compliance, the Zoning Administrator shall issue an amended improvement location permit. Any determination by the Zoning Administrator with respect to an amended improvement location permit shall be subject to the same appeal rights and procedures as set forth above for an initial application for an improvement location permit.

(G) Revocation in Event of Violation. If the Zoning Administrator determines that construction or development is proceeding or has proceeded in violation of any applicable law, ordinance, rule, regulation, site plan, or condition approval, or that the improvement location permit has been issued in violation of any applicable law, ordinance, rule, regulation, site plan, zoning commitment, or condition of approval, the Zoning Administrator may revoke such improvement location permit. In the event that an improvement location permit is revoked, the Zoning Administrator shall send written notice of the revocation to the permit applicant.

(H) Fees. Fees for improvement location permits shall be as established by the Council.
Chapter 16
Development Review Procedures

Section 16.03 Compliance with Other Laws, Ordinances, Rules or Regulations.

The issuance of an *improvement location permit* does not substitute for or supersede the requirement to obtain approvals specified in other laws, ordinances, rules and regulations, as the same may be amended from time to time, before the construction of any *building*, *structure*, *improvement* or *sign*, including, but not limited to:

(A) *Town* building code;

(B) *Town Subdivision Control Ordinance*;

(C) Any other applicable federal, state or local law, ordinance, rule or regulation, including, but not limited to:
   
   (1) Rule 5 Erosion Control Regulations;
   
   (2) Chapter 14 Floodplain Regulations of this Ordinance;
   
   (3) *Driveway* permit regulations for the *Town*; and,
   
   (4) State or Federal Environmental Permits.

Section 16.04 Application Form and Plan Requirements.

(A) All *improvement location permit* applications shall comply with the form of application specified by the *Town*. When an *improvement location permit* is required by this Ordinance, additional site plans, landscape plans, lighting plans, *sign* plans and *building* elevations, as described below, may be required to determine compliance with the requirements and proper administration of this Ordinance.

(B) The *Zoning Administrator* may request any and all other information as may be required for the proper administration of this Ordinance.

(C) The *Zoning Administrator* may waive or relax any of the site plan, landscape plan, lighting plan, *sign* plan or *building* elevation requirements listed below, as circumstances dictate.

(D) Site plan requirements for a single family or a two-family dwelling on a platted *lot* shall be as follows:

   (1) North arrow;

   (2) Address of the *lot*;
(3) The actual shape, size and dimensions of the lot, at a scale of not more than 1"=100';

(4) Legal description of the lot;

(5) Names, center-lines and right-of-way widths of all streets, alleys, thoroughfares, public ways, waterways, or railroad right-of-ways abutting or within the lot;

(6) The location and dimensions of all buildings, structures or improvements currently existing on the lot;

(7) Structures proposed for demolition should be indicated as such;

(8) The location, height and dimensions of all proposed buildings, structures or improvements, including fences, sheds, paved areas, storage areas, parking areas (indicate if parking is hard surfaced). Cross-hatch or shade lightly all proposed buildings;

(9) Location of any proposed or existing driveway and its width at the property line. (Any connection to an alley must also be indicated);

(10) The distance from lot lines for all existing and proposed buildings, structures or improvements (this distance is measured as a line from the point where the building, structure or improvement is closest to the property line. This measurement is taken perpendicular to the property line); and

(11) Location of all floodway and floodway fringe areas within the boundaries of the site.

(E) Site plan requirements for any office, commercial, industrial or special exception use shall be as follows:

(1) Site plan requirements of sub-Section (D)(1) through (D)(11), above;

(2) Proposed name of the development;

(3) Area map or sketch to indicate the location of the lot;

(4) The number of dwelling units (if applicable) of existing and proposed buildings or structures;

(5) The current and proposed use to be made of all buildings, structures, improvements or lands within the lot (e.g. parking area, loading area, residence, office, outdoor storage);
Development Review Procedures

(6) Locational Engineering information regarding all utilities to provide service to the buildings or structures on the lot;

(7) The location and dimensions of all off-street parking and loading areas and facilities;

(8) The location, size and dimension of all fences, walls or other screening and buffering devices;

(9) Site data summary (a text summary in table format) describing existing and proposed: square footage of buildings; required parking; required loading; maximum building height; accommodation of drainage, sanitary sewer, water and other utility services; lighting; and landscaping;

(10) The seal of the registered professional engineer or architect responsible for the site plan;

(11) Building Elevations:
   (a) Elevations for each facade of the building;
   (b) Specification or sample of the type and color of building materials to be used for all wall, window, roof and other architectural features; and
   (c) Any other information requested in writing by the Zoning Administrator.

(12) Sign Plan:
   (a) Location and distance from all lot lines of all existing and proposed freestanding signs (if applicable) on the site;
   (b) Location and size of all existing and proposed building sign(s);
   (c) Illumination details for all proposed signs;
   (d) Elevation of proposed signs including size, materials and color, as required; and
   (d) Any other information requested in writing by the Zoning Administrator, including but not limited to the requirements of sub-sections (D)(1) through (D)(11) and (E)(1) through (E)(10).

(13) Landscape Plan:
   a. The location of any existing or proposed freestanding signs;
b. Outline of all existing or proposed Buildings or structures, including parking areas and loading areas;

c. Boundary lines of the site;

d. All existing elevations and proposed land contour lines having at least two (2) foot intervals;

e. Proposed sidewalk, walkway or alternate plan for pedestrian ways;

f. Size, species and spacing (on center) of all proposed trees, landscaping and ground cover;

g. Location of existing trees in required yards, indicating type and size of trees and whether such trees are to be removed or preserved;

h. Description of methods to preserve trees without injury and with sufficient area for the root system to sustain the tree;

i. Description of protective care and physical restraint barriers at the drip line to prevent alteration, compaction or increased depth of the soil in the root system area prior to and during groundwork and construction; and

j. Any other information requested in writing by the Zoning Administrator, including but not limited to the requirements of sub-sections (D)(1) through (D)(11) and (E)(1) through (E)(10).

(14) Lighting Plan.

(a) Boundary lines of the site including all dimensions of the site.

(b) Outline of Buildings, structures and other improvements (e.g., parking areas, loading areas, interior access drives, etc.) on the lot and the location of all outdoor light fixtures.

(c) A description of the outdoor light fixtures, including but not limited to manufacturers or electric utility catalog specifications sheets, drawings or photometric report, which indicate:

(d) the outdoor light fixture classification (e.g., cutoff, semi-cutoff, full cutoff, or non-cutoff);

(e) mounting height of freestanding outdoor light fixtures;
(f) wattage proposed for each outdoor light fixture;

(g) If architectural building lighting is proposed, indicate the location, type and intensity of lighting on each building façade; and

(h) Any other information requested in writing by the Zoning Administrator, including but not limited to the requirements of sub-sections (D)(1) through (D)(11) and (E)(1) through (E)(10).

Section 16.05 Zoning Ordinance Amendment Procedures.

(A) Text Amendments. The procedures and requirements for the preparation and consideration of proposal to amend or partially repeal the provisions of this Ordinance shall be as follows:

(1) Text of Zoning Ordinance. The Council may, from time to time, upon its own motion or upon the petition of the Area Plan Commission, amend or partially repeal the text of this Ordinance in accordance with the provisions of Indiana Code 36-7-4-602, et seq.

(2) Town Council Action. In the case of a proposal to amend or partially repeal the text of this Ordinance, or in the case of a zone map change, the Council may act upon such amendment only after a report has been presented by the Area Plan Commission after public notice and hearing in accordance with the provisions of Indiana Code 36-7-4-604, et seq.

(3) Town Council May Initiate Proposal. The Council may initiate and also require the Area Plan Commission to prepare a proposal to amend or partially repeal the text of this Ordinance; or, consider and recommend a proposal for zone map change, and submit such amendment to a public hearing by the Area Plan Commission within sixty (60) days after formal written request by the Council.

(4) Review Procedure and Time Limits. The procedure for the referral of a proposed amendment to the Area Plan Commission and the time limits for action by the Area Plan Commission and the Council shall be as set forth in Indiana Code 36-7-4-607, et seq.

(B) Zone Map Amendments (a/k/a rezoning petitions). The procedures and requirements for the preparation and consideration of proposal to amend zone maps shall be as follows:

(1) Zone Map Change. Proposals to change the zone maps, whether by incorporating an additional map or by amending or deleting a map, incorporated by reference into this Ordinance may be initiated by the Council, the Area Plan Commission, or by a
petition of the owners of property of at least fifty (50) percent of the area involved in
the petition in accordance with the provisions of Indiana Code 36-7-4-602, et seq;

(2) Filing of Proposal. A proposal for zone map change (a/k/a rezoning petition) shall be
filed in the office of the Council. The proposal shall be on forms substantially as
provided by the Town and available from the Area Plan Commission;

(3) Required Plans. Each proposal for zone map change shall be accompanied by six (6)
copies of a proposed Site Plan which conforms generally to the requirements set forth
in Section 16.04 Application Form and Plan Requirements, above;

(4) Referral to Area Plan Commission. The Council shall refer a proposal for zone map
change to the Area Plan Commission for public hearing and recommendation;

(5) Supplemental Plans. Depending on the nature of the proposal, the Executive Director
shall have the authority to request the submission of other supplemental information
including but not limited to building elevations, sign plans, landscape plans, lighting
plans or traffic studies. If requested, such additional building elevations, sign plans,
landscape plans or lighting plans shall conform to the requirements set forth in
Section 16.04 Application Form and Plan Requirements, above;

(6) Certification. After public hearing, the Area Plan Commission shall certify the
proposal with:

(a) A favorable recommendation;

(b) An unfavorable recommendation; or,

(c) No recommendation;

(7) Commitments. The certification of a proposal by the Area Plan Commission to the
Council may include written commitments as set forth in sub-Section 15.02 (D)
Commitments. Such commitments may include limitations upon certain uses;
requirements for specific building or parking area setback, or screening; requirements
for specific site design features or project amenities; or, requirements that
development conform with site plans, building elevations, sign plans, landscape plans
or lighting plans which were submitted in connection with the proposal; and

(8) The Council may adopt or reject the proposal for zone map change, as certified.

16.06 Variance and Special Exception Use Procedures.

The procedures and requirements for the preparation and consideration of petition for a variance
of development standards or a special exception use shall be as follows:
Chapter 16
Development Review Procedures

(A) Petitions. Petitions for a variance of development standards or for a special exception use shall be filed in office of the St. Joseph County / City of South Bend Building Department. The proposal shall be on the form provided, available from the office of the St. Joseph County / City of South Bend Building Department.

(B) Town Referral. Each petition for a variance of development standards or for a special exception use shall include a letter from the Town describing the nature of the variance or special exception use required.

(C) Required Plans. Each petition for a variance of development standards or for a special exception use shall be accompanied by a Site Plan which conforms to the requirements set forth in Section 16.04 Application Forms and Plan Requirements, above.

(D) Supplemental Plans. Depending on the nature of the petition, the Zoning Administrator shall have the authority to request the submission of plans of operation, traffic studies, radio frequency studies, or other supplemental information including but not limited to building elevations, sign plans, landscape plans or lighting plans. If requested, such additional building elevations, sign plans, landscape plans or lighting plans shall conform to the requirements set forth in Section 16.04 Application Forms and Plan Requirements, above.

(E) Variance of Development Standards. The Board of Zoning Appeals, at a public hearing, shall hear and determine all variances of development standards.

(F) Special Exception Uses. Upon receipt of a petition for a Special Exception Use, the St. Joseph County / City of South Bend Building Department shall forward a copy of the petition to the Town. The Board of Zoning Appeals, at a public hearing, shall hear and make a favorable recommendation, unfavorable recommendation or no recommendation to the Council on all special exception uses. The Council shall approve or disapprove all petitions for special exception uses within sixty (60) days after the Board of Zoning Appeals makes its recommendation. If the Council does not vote to deny the petition for a special exception use within sixty (60) days, the petition is approved.

Section 16.07 Modification or Termination of Commitments.

In those instances where a property owner wishes to request that commitments which were entered into in connection with a development plan approval, zone map change, PUD District Ordinance, secondary approval of a PUD, modification of permitted uses or development requirements of a PUD, variance, or a special exception use, be modified or terminated, such request for modification or termination shall comply with the following requirements:

(A) Form of Filing. Such request shall be filed as a "Petition for Modification or Termination of Commitments" with the body which permitted or required the commitments (i.e., the Area Plan Commission or the Board of Zoning Appeals).
(1) In the case of a modification or termination of commitments permitted or required by the Area Plan Commission, such petition shall be on forms provided by the Office of the Area Plan Commission.

(2) In the case of a modification or termination of commitments permitted or required by the Board of Zoning Appeals, such petitions shall be on forms provided by the St. Joseph County / City of South Bend Building Department.

(B) Public Hearing and Notice. Each request for modification or termination of commitments shall be determined after a public hearing. The notification requirements and other procedural requirements for conducting the public hearing on a modification or termination of commitments shall be the same as for the initial public hearing at which the commitments were originally permitted or required.

(C) Reasons for Modification or Termination. The petitioner or property owner shall be responsible for presenting convincing evidence to the Area Plan Commission or the Board of Zoning Appeals as to the reasons, need or justification for the proposed modification or termination of commitments.

Section 16.08 Combined Hearing Procedure

(A) The Area Plan Commission may designate a hearing examiner or committee of the commission to conduct a combined hearing relative to developments that require more than one hearing under this title.

(B) The decision to use this procedure shall be made by the applicant.

(C) In conducting a combined hearing, the hearing examiner or committee of the Area Plan Commission may exercise the following:

(1) The powers of the Area Plan Commission in making recommendations to the Council on rezoning petitions and text amendments under the I.C. 36-7-4-600 series.

(2) The powers of the Plat Committee in approving or denying subdivision plats under the I.C. 36-7-4-700 series.

(3) The powers of the Board of Zoning Appeals to grant variances and make recommendations on special exception uses under the I.C. 36-7-4-900 series.

(4) The powers of the Executive Director, hearing examiner or committee of the Area Plan Commission as it concerns the approval of Development Plans under the I.C. 36-7-4-3-1400 series.
Chapter 16
Development Review Procedures

(D) Decisions of the hearing examiner or committee of the Area Plan Commission under the combined hearing procedure may be excepted or appealed as follows:

(1) Decisions made in relation to the powers granted under sub-Section 16.08 (C)(1), above, may be appealed to the Area Plan Commission not later than five days after the date the decision is made.

(2) Decisions made in relation to the powers granted under sub-Section 16.08 (C)(2), above, may be appealed to the Area Plan Commission not later than five days after the date the decision is made.

(3) Decisions made in relation to the powers granted under sub-Section 16.08 (C)(3), above, may be appealed to the Area Plan Commission not later than five days after the date the decision is made.

(E) The Area Plan Commission shall make rules governing the hearing of cases under the combined hearing procedure. The rules may not require a petitioner or an applicant to use the combined hearing procedure.
CHAPTER 17

ENFORCEMENT

Section 17.01 Authority.

The Zoning Administrator of the Town is hereby designated to enforce the terms and provisions of this Ordinance in accordance with state law.

Section 17.02 Alleged Violations.

Whenever the Zoning Administrator of the Town receives a complaint or has reason to suspect that an alleged violation of the terms and provisions of this Ordinance are occurring, the Zoning Administrator shall investigate the complaint or suspicion and shall take whatever action is warranted in accordance with the provisions of this Chapter.

Section 17.03 Responsibility for Violations.

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance, may be held responsible for the violation, suffer the penalties, and be subject to the remedies herein provided.

Section 17.04 Inspection of Property; Right of Entry.

(A) The Zoning Administrator may enter upon any building, structure or land or part thereof at any reasonable time for the purpose of inspecting all buildings, structures or lands located within the corporate limits of the Town for the purpose of carrying out their duties in the enforcement of this Ordinance. Prior to entering upon any premises, the Zoning Administrator shall furnish sufficient identification and information to enable the owner, tenant or occupant to determine the purpose of the inspection and that the person conducting the inspection is an authorized representative of the Town.

(B) In the event that entry is denied by the owner, tenant or occupant of a premises, the Zoning Administrator may make application to any court of competent jurisdiction for the issuance of a search warrant. Such application shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is in violation of this Ordinance exists on the premises, or that such a violation in fact exists and must be abated, and that the condition or violation is not a lawful nonconforming use to the best of the affiant's belief. Any warrant issued pursuant to such application shall order such owner, tenant or occupant to permit entry to the Zoning Administrator for the purposes stated therein.
Chapter 17  
Enforcement  

Section 17.05 Cease and Desist Order

The Zoning Administrator is empowered to issue a cease and desist order requiring the suspension of land improvement of any kind when any of the following circumstances exist:

(A) A site improvement is occurring without an improvement location permit or any other permit required by this Ordinance having first been obtained; or,

(B) A site improvement is occurring in violation of:

(1) The terms, conditions or provisions of this Ordinance;

(2) The terms and conditions of an improvement location permit;

(3) The terms and conditions of any other permit required as a pre-requisite to the issuance of an improvement location permit;

(4) The terms, provisions, conditions or commitments of a variance or special exception use;

(5) Other approval grant authorized by this Ordinance; or,

(6) Other applicable federal, state or local law or ordinance.

(C) The cease and desist order shall be posted on the property in a conspicuous place, or personally delivered to the owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance and state the conditions under which construction or other activity may be resumed. The Zoning Administrator shall meet with the recipient of a Cease and Desist Order upon request to explain the conditions under which construction or other activity may be resumed.

(D) In addition to any other remedies available pursuant to any other applicable law and this Ordinance, the Town Attorney, Zoning Administrator or appropriate enforcement official may institute a lawsuit in a court of competent jurisdiction to enforce the provisions of a cease and desist order, including but not limited to injunctive relief.
Section 17.06 Violations

Subject to the provisions of Chapter 3 Nonconforming Lots, Uses, Buildings, Structures or Signs, each of the following shall constitute a zoning violation which may be enforced by the Town or the building department in accordance with the provisions set forth in Section 17.07 Remedies or Penalties for Violation, below:

(A) The location, erection, or maintenance of any sign not specifically permitted by this Ordinance;

(B) The failure to obtain an improvement location permit when one is required by the terms and provisions of this Ordinance;

(C) The outdoor storage of junk, trash or debris in any district the provisions of which do not specifically permit such a use;

(D) The parking or storage, in any district the provisions of which do not specifically permit such a use, of any:
   
   (1) Motor vehicle used or designed for use in pulling, towing, hauling, transporting; or
   
   (2) Motor vehicle or separate trailer as a temporary or permanent base, platform or support for equipment, machinery, materials or other goods (including but not limited to stake body trucks, dump trucks, trucks or tractors having dual rear wheels or more than one axle or having an overall length of more than twelve (12) feet).

(E) The outdoor storage or display of merchandise or goods in any district the provisions of which do not specifically permit such a use or in violation of the district development standards regulating such a use;

(F) The conduct of any activity in any district that is not specifically enumerated as a permitted primary or accessory use in that district, and which activity has not been legally established by a currently valid special exception use or other approval grant;

(G) Failure to comply with district development standards, including but not limited to landscaping, paving of parking areas, minimum parking space requirements, minimum loading space requirements, trash dumpster enclosure, fencing, landscaping or screening requirements;

(H) The failure to comply with:
Chapter 17

Enforcement

(1) the terms, provisions, conditions or commitments of a variance grant or special exception use grant;

(2) the terms of commitments made in connection with a zoning map change or the approval of a development plan;

(3) the terms, provisions or conditions of any other permit required as a pre-requisite to the issuance of a improvement location permit; or,

(4) other approval grant authorized by this Ordinance;

(I) The violation of a cease and desist order issued pursuant to this Chapter 17; and,

(J) Failure to comply with any other provisions of this Ordinance, or other applicable federal, state or local law or ordinance.

Section 17.07 Remedies or Penalties for Violation

(A) Generally.

(1) Any owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance as defined in Section 17.06 Violations, above, may be issued a citation by the Zoning Administrator.

(2) Subject to the provisions of sub-Sections 17.07 (B) and (C), below, each day a zoning violation remains uncorrected is a distinct and separate zoning violation subject to an additional citation and fine in the amount prescribed in this Ordinance.

(B) Procedures for Initial Notice of Zoning Violation or Citation.

(1) The Zoning Administrator may issue a notice of zoning violation to a person (i.e., any owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person) who commits a zoning violation or allows a zoning violation to be committed on real estate in which the person has a possessory interest. The notice of zoning violation may be served by: personal service; certified mail, return receipt requested; registered mail; or, by posting such notice in a conspicuous place on the property where the violation occurs, and shall serve as notice that a zoning violation has been committed.

(2) No citation shall be issued unless notice as required by sub-Section (B)(1), above, has been provided at least ten (10) days before the citation is issued, in order to allow the
person receiving notice an opportunity to correct the violation and to come into compliance with the terms and provisions of this Ordinance, provided, however, the service of a notice of zoning violation and the provision of time to correct the zoning violation is not required before issuing a citation for:

(a) violation of a cease and desist order issued pursuant to Section 17.05 Cease and Desist Order, above; or

(b) violation of sub-Section 12.03 (G) (g) or (i) regarding signs or lights located on a wireless telecommunications facility.

If upon re-inspection, the zoning violation remains unabated, a second notice of zoning violation may be served, or a citation accompanied by the fines as specified in Section 17.08 Fines, below, may be issued.

(C) Action after Second Notice or Citation. A person (i.e., any owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person) who is served with a second notice of zoning violation or receives a citation shall have ten (10) days from service of a second notice of zoning violation or receipt of citation to take one of the following actions:

(1) The person may elect to file a petition for zoning map change, variance, special exception use or development plan approval to correct such violation, in which case the person must indicate the intent to file such a petition on the served second notice or citation and return a copy to the Zoning Administrator or appropriate enforcement official. During the pendency of said petition the issuance of additional notices or citations and additional monetary fines as prescribed in Section 17.08 Fines, below, shall be stayed. A person who files the petition within said time period shall pursue the petition in an expeditious and diligent manner. If the petition is denied, withdrawn or dismissed and the zoning violation continues, then a lawsuit may be commenced by the Town Attorney, Zoning Administrator or appropriate enforcement official as provided by applicable laws.

(2) The person or any other interested party may elect to appeal the decision of the enforcement official pursuant to Chapter 15 Section 15.03(C) as an Administrative Appeal before the Board of Zoning Appeals.

(D) Legal Action for Failure to Correct Violation.

If an owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who is served with a second notice of zoning violation or receives a citation fails to either correct the violation or take such actions to
Chapter 17
Enforcement

come into compliance within ten (10) days as set forth in sub-Section (B), above, then the Town Attorney, Zoning Administrator or appropriate enforcement official may institute legal action in a court of competent jurisdiction to enforce the terms and conditions of this Ordinance, including, but not limited to: enforcement of a Cease & Desist Order as provided in Section 17.05 Cease & Desist Order; assessment and collection of fines as provided in Section 17.08 Fines; or, the pursuit of injunctive and other equitable relief and remedies available under state law.

Section 17.08 Fines

Monetary fines for zoning violations shall be assessed as set forth in Chapter 18 Fines.

Section 17.09 Additional Remedies

(A) Seeking a penalty as authorized in this Chapter does not preclude the designated enforcement entity from seeking alternative and additional relief from the Court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of this Ordinance available under applicable state law.

(B) In the event that a violation of this Ordinance is determined to exist by a court of competent jurisdiction, the owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance shall be liable to the Town for the Town's reasonable attorney fees in accordance with state law.
CHAPTER 18
FINES

Section 18.01 Intent.
The intent of this Chapter is to solicit compliance with the terms, criteria and standards of this Ordinance in a fair and equitable manner. This Chapter establishes the monetary fines for zoning violations which may be assessed against those who violate the terms and conditions of this Ordinance.

Section 18.02 General Provisions.
(A) Each day that a zoning violation remains uncorrected is a distinct and separate zoning violation subject to an additional citation and fine in the amount prescribed in this Chapter.

(B) All fines prescribed by this Chapter for zoning violations shall be paid and administered as follows:

(1) To the Town; and

(2) The person making the payment shall receive a receipt stating the amount and purpose for which the fine has been paid, a duplicate of which shall be made a part of the records of the Town.

(C) If a person who receives a citation fails to:

(1) pay the assessed fine within:
   (a) fourteen (14) days after the issuance of a citation in a residential district;
   (b) seven (7) days after the issuance of a citation in an office, business, commercial or industrial district;
   (c) five (5) days after the issuance of a citation for a wireless telecommunications facility; or

(2) file a petition as prescribed in sub-Section 17.07 (C)(1);

   the Town Attorney, Zoning Administrator or appropriate enforcement official may file a lawsuit as provided by applicable law to enforce the terms and provisions of this Ordinance.

(D) In the event of a citation for a zoning violation in a planned unit development district, fines shall be assessed based upon the use authorized for the property on which the violation has occurred. Any property approved for residential uses only shall be assessed as if the
property was located in a residential district. Any property approved for commercial
development or industrial uses shall be assessed as if the property was located in a
commercial district or an industrial district. Any property used for a Wireless
Telecommunications Facility shall be assessed as specified for a Wireless
Telecommunications Facility.

Section 18.03 Zoning Violation Fine Schedule.

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<tr>
<th>TABLE 18.01</th>
<th>Zoning Violation Fine Schedule</th>
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<td>Signs</td>
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CHAPTER 19
DEFINITIONS

Section 19.01 Interpretation of Terms or Words.

The language of this Ordinance shall be interpreted in accordance with the following regulations:

(A) The word "person" includes a firm, association, organization, partnership, trust, limited liability company, corporation, or other legal entity, as well as an individual;

(B) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular, in each case, if the context so requires;

(C) The word "shall" is mandatory, the word "may" is permissive;

(D) The words "used" or "occupied" include the words "intended", "designed", "constructed", "altered", or "arranged" to be used or occupied;

(E) The word "lot" includes the words "plot", "tract", or "parcel"; and

(F) Where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and", "or", or "either ... or", the conjunction shall be interpreted as follows:

(G) "And", indicates that all the connected items, conditions, provisions or events shall apply.

(H) "Or", indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(I) "Either ... or", indicates that all the connected items, conditions, provisions or events shall apply singly but not in combination.

(J) The terms "more intense" and "less intense" are terms used herein to describe relationships between particular districts. This relationship is based upon the uses permitted within each district. A "more intense" district permits more uses or a greater density of uses than a "less intense" district. District intensity groupings progress from Residential, to Office Buffer, to Commercial, to Industrial districts, in the sequence listed within each group of districts from least intense to the most intense.

(K) Any words not defined shall be construed in their general accepted meanings as defined by *Webster’s Dictionary*. 
Chapter 19
Definitions

Section 18.02 Definitions.

The following terms or words used in the text of this Ordinance shall have the following meanings, unless a contrary meaning is either required by the context of a particular sentence or phrase, or specifically prescribed in a particular sentence or phrase.

“ABANDONED” means a condition that exists after a voluntary act or failure to act by the owner of a nonconforming use which evidences that the owner neither claims nor retains the right to exercise the nonconforming use.

“ACCESS” means the way in which vehicles ingress and egress a lot from a street fronting along the lot.

“ACCESS DRIVE” means that area within the right-of-way between the pavement edge or curb and the right-of-way line to provide ingress and egress to and from a lot.

“ACCESSORY LIVING QUARTERS” means no more than two (2) dwelling units incidental to and located within the same building as the non-residential primary use.

“ACCESSORY (STRUCTURE, BUILDING OR USE)” means a subordinate structure, building or use that is customarily associated with, and is appropriately and clearly incidental and subordinate in use, size, bulk, area and height to the primary structure, building, or use, and is located on the same lot as the primary building, structure, or use.

“ACCESSORY PARKING LOT” See “PARKING LOT, ACCESSORY”

“ADULT BUSINESS” See Chapter 12.

“ALLEY, PRIVATE” means a private right-of-way for public use as a secondary means of public access to a lot otherwise abutting upon a public street or private street and not intended for traffic other than public services and circulation to and from said lot.

“ALLEY, PUBLIC” means any public right-of-way which has been dedicated or deeded to and accepted by the public for public use as a secondary means of public access to a lot otherwise abutting upon a public street and not intended for traffic other than public services and circulation to and from a lot or lots.

“ANTENNA” means any structure or device designed and used to:

(1) Receive direct broadcast satellite service, including direct-to-home satellite services;
(2) Receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services;

(3) Receive radio or television broadcast signals; or

(4) Collect or radiate electromagnetic waves, including both directional antennas, such as panel antenna, and dish antenna, and omni-directional antennas, such as whip antennas, but no including satellite earth stations.

“ANTENNA ARRAY” means a structure attached to a telecommunications tower that supports a telecommunications antenna.

“ANTENNA, DISH” means a dish shaped device which may be free standing or mounted on a building or structure and is designed to receive direct broadcast satellite service.

“ANTENNA, FLAGPOLE” means a telecommunications tower designed to appear and function as a large diameter flagpole where panel antenna are integrally designed into and located inside of a telecommunications tower and are not visible from the exterior. A flagpole antenna may or may not include flying of a flag. Flagpole antenna may be ground mounted or roof-mounted.

“ANTENNA, NON-WHIP” means an antenna which is not a whip antenna, such as dish antennas, panel antennas, etc.

“ANTENNA, PANEL” means a flat, rectangular antenna or antenna array designed to concentrate a radio signal in a particular area. Panel antennas are also known as directional antenna or sectored antenna.

“ANTENNA, RADIO/TELEVISION” means a wire or combination of wires and support structures designed for directly transmitting electric waves (broadcast radio or television) into space, or receiving them therefrom.

“ANTENNA, SLICK” means panel antennas that are mounted directly to a tapering monopole telecommunications tower, where the furthest point of the panel antenna is no greater than eighteen (18) inches from the exterior of the tapering monopole telecommunications tower.

“ANTENNA, TELECOMMUNICATION” means an antenna used to provide a telecommunications service.

“ANTENNA, STEALTH” means an antenna or antenna array placed on or in an existing or proposed building, structure, or telecommunications tower and designed or placed in a manner intended to disguise, hide, or minimize the appearance of such antenna or antenna
array. A stealth antenna may or may not have a secondary function (e.g., bell tower, church steeple, spire, flagpole, clock tower, cupola, etc.). Stealth antenna may include, but are not limited to: flagpole antenna; slick antenna; or a surface-mount antenna with a color and appearance that is compatible with or blends with the color and materials of the surface of the building or structure to which the surface-mount antenna is attached.

“ANTENNA, WHIP” means an omni-directional dipole antenna of cylindrical shape, which is no more than six (6) inches in diameter.

“AREA BOARD OF ZONING APPEALS” means the Board of Zoning Appeals having jurisdiction over all real property within the Town.

“AREA PLAN COMMISSION” means the Area Plan Commission of St. Joseph County, Indiana, established pursuant to the Area Planning Law of the State of Indiana.

“ASSEMBLY (when used in reference to an industrial operation)” means the fitting together of previously manufactured parts or sub-assemblies that do not require additional manufacturing or machining, into a finished item or unit. All assembly operations are to be conducted entirely within an enclosed building.

“AUTHORIZED AGENT” means any party duly authorized in writing by the Owner of a subject parcel to act on the Owner's behalf with respect to any development petition, including but not limited to a petition for: zone map change; platting of a subdivision; development plan approval; variance; special exception use; or, vacation of land in a plat.

“AUTOMOTIVE USES” means any business or operation where the vehicles are serviced, sold, or rented, including but not limited to: automobile sales, body repair, car washes, detailing, lubrication, mechanical repairs, painting and tire repair and replacement. AUTOMOTIVE USES do not include salvage yards, vehicle storage, or similar uses otherwise defined in this chapter.

“AWNING” means a roof-like cover, often of fabric, metal, plastic, fiberglass or glass designed and intended for protection from the weather or as a decorative embellishment, and which is supported by and projects from a wall or roof of a building or structure over a window, door, sidewalk, walkway or the like.

“BANNER” See SIGN, BANNER.

“BAR” means a premises used primarily for the sale or dispensing of liquor and/or alcoholic beverages by the drink for on-site consumption, and where packaged liquor may be sold or food may be available for consumption on the premises as accessory to
the primary use.

“BASEMENT” means that portion of a building with an interior vertical height clearance of not less than seventy-eight (78) inches and having one-half or more of its interior vertical height clearance below grade level.

“BED & BREAKFAST” means the commercial leasing of bedroom(s) for guest(s) within a private, owner-occupied, single family dwelling unit or two-family dwelling unit. Such leasing provides temporary accommodations, typically including a morning meal, to overnight guests for a fee. Such leasing may also provide for the temporary accommodation of daytime meetings or receptions for guests for a fee. Such leasing caters largely to tourists and the traveling public.

“BLOCK” means a tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines, or municipal boundary lines.

“BLOCK FACE” means the frontage of a block, which may contain one or more lots, along one side of a public street or private street between intersections.

“BOARD OF ZONING APPEALS” See AREA BOARD OF ZONING APPEALS.

“BUILDING” means any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

“BUILDING COMMISSIONER” means the Building Commissioner of St. Joseph County, Indiana.

“BUILDING DEPARTMENT” means the South Bend/St. Joseph County Building Department.

“BUILDING HEIGHT” means the vertical distance measured from the average elevation of the proposed finished grade at the front of the building or structure to the highest point of the building (typically the roof) or structure, provided, however, appurtenances such as chimneys, spires, cupolas, steeples, antenna attached to a building or structure shall not be included in the calculation of building height.

“BUILDING LINE” means a line parallel to any front lot line, side lot line or rear lot line which passes through the nearest point of any building or structure.
“BUILDING PERMIT” means a permit issued in compliance with the terms and provisions of the Building Code for the Town.

“BUSINESS” means an enterprise involving selling, storing or processing goods or commodities, or the rendering of services.

“BUSINESS DAY” means a day when the offices of the Town of Osceola or the Area Plan Commission are open to the public for the transaction of business for the entire period of its normal operating hours.

“CALIPER” means the diameter of a tree trunk, measured in inches, at six (6) inches above the ground.

“CANOPY” means a roof-like cover, often of fabric, metal, plastic, fiberglass or glass on a support, which is supported in total or in part, from the ground and providing shelter over, for example, a doorway, outside walk, interior access drive or parking area.

“CARPORT” means a roofed structure designed and intended to shelter the automotive vehicle of occupant or owner of the premises, with at least one (1) side open to the weather.

“CASINO” means a building, facility or room where any gambling games, not operated by a qualified organization are conducted. (For reference see Indiana Code 4-32.2 et. seq.)

“CERTIFICATE OF OCCUPANCY” means a certificate issued authorizing an occupancy under the Building Code.

“CHILD CARE” means a service that provides for the care, health, safety and supervision of a child's social, emotional and educational growth.

“CHILD CARE CENTER” means a nonresidential building where at least one (1) child receives child care from a provider:

1. while unattended by a parent, legal guardian, or custodian;
2. for regular compensation; and
3. for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays, and holidays.
“CHILD CARE HOME” means a residential structure in which at least six (6) children (not including the children for whom the provider is a parent, stepparent, guardian, custodian, or other relative or any child who is at least fourteen (14) years of age and does not require child care) at any time receive child care from a provider:

(1) while unattended by a parent, legal guardian, or custodian;
(2) for regular compensation; and
(3) for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays, and holidays.

“CHILD CARING INSTITUTION” means an institution that:

(1) Operates under a license issued under IC 31-27;
(2) Provides for delivery of mental health services that are appropriate to the needs of the individual; and,
(3) Complies with the rules adopted under IC 4-22-2 by the department of child services.

“CHILD CARE MINISTRY” means child care operated by a church or religious ministry, that is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code.

“CLUB” means an association or corporation organized, in good faith, under authority of law; owning, leasing or occupying an establishment operated solely for objects of a nation, social, patriotic, religious, political, or athletic nature, or the like; such as but not limited to Kiwanis, Knights of Columbus, Lions Club, Elks Lodge, Veterans of Foreign Wars, American Legion, etc.

“CO-LOCATION” means the placement of two or more antenna or antenna arrays by telecommunication service providers on a common support structure.

“COMMITMENT” means a legally binding, written restriction on the use and development of real estate entered into in connection with a petition for: zoning map change; development plan approval; special exception; or, variance.

“COMPREHENSIVE PLAN” means the Comprehensive Plan for the Town, or any supplemental or replacement comprehensive plan subsequently recommended by the Area Plan Commission and adopted by the Council pursuant to Indiana law.

“CONCEPT PLAN” means an informal site plan of a proposed subdivision, project, planned unit development or other development intended to convey the scope, content and nature of a proposed development, but lacking sufficient detail to determine compliance with Ordinance requirements.
“CONDITIONAL USE”. See USE, CONDITIONAL

“CONDOMINIUM” means a building, group of buildings, or portion thereof, in which units are owned individually, and the structure, common areas, or facilities are owned by all the owners on a proportional, undivided basis. (See Indiana Code 32-25).

“CONFORMING” means the state of being in compliance with the permitted use or development standards regulations of the district to which the real estate is zoned pursuant to this Ordinance.

“CONTROLLED USE” means those uses of property which are recognized as having serious objectionable characteristics, particularly when several of them are concentrated, thereby having a deleterious effect upon the adjacent areas, specifically including, but not necessarily limited to adult business.

“COTTAGE SCHOOL” means a private school which provides educational services for a maximum of six (6) children at a time; is operated in a residential property as a home occupation; and provides educational instruction for students between and including grades K – 12.

“COUNCIL”. See TOWN COUNCIL.

“CUTOFF” means a luminaire where light distribution does not exceed: (a) 2.5 percent above an angle of 90 degrees; and, (b) 10 percent at an angle between 80 degrees and 90 degrees.

“CUTOFF, FULL” means a luminaire equipped with a light fixture (i.e., lamp, lens, reflective surface, etc.) that does not protrude below the bottom edge of the light fixture and is designed so that: (a) no light is emitted above an angle of 90 degrees; and, (b) light distribution does not exceed 10 percent at an angle between 80 degrees and 90 degrees.

“CUTOFF, NON” means a luminaire where light distribution is unrestricted.

“CUTOFF, SEMI” means a luminaire where light distribution does not exceed: (a) 5.0 percent above an angle of 90 degrees; and, (b) 20 percent at an angle between 80 degrees and 90 degrees.

“DECK” means a ground-supported, unenclosed, platform accessory structure, usually constructed of wood, of which any permanent horizontal area(s) of the platform is raised above grade level and is designed and intended for the recreational enjoyment of the occupant(s) and guest(s) of the primary use or structure.

“DEVELOPMENT PETITION” means any petition or review process required by this Ordinance prior to the issuance of a improvement location permit, including but not limited
to petitions for: zone map changes; variances; special exception uses; primary plats; secondary plats; re-plats; vacations; or, development plans.

“DEVELOPMENT PLAN” means specific plans development of property filed in connection
with development incentives review under the terms of this Ordinance. A development plan
may include, but not be limited to: a site plan; landscape plan; signs; lighting plans; building
elevations; and pedestrian and vehicular circulation plans, which are reasonably necessary to
depict or describe certain information and data as required by this Ordinance.

“DEVELOPMENT REQUIREMENTS” means permitted uses, development standards and any
additional requirement specified in this Ordinance which must be satisfied in connection with
the approval of a development plan.

“DEVELOPMENT STANDARDS” means area, bulk, height, setback, parking, loading,
landscaping, lighting, performance standards, building materials, pedestrian and vehicular
circulation, and other applicable regulations of a district contained in the Ordinance which
govern the physical development of real estate.

“DIRECTOR”. See EXECUTIVE DIRECTOR.

“DISTRIBUTION CENTER”. See TRUCK TERMINAL.

“DISTRICT” means any zoning district or overlay district applicable to a section of the territory
within the jurisdiction of this Ordinance.

“DISTRICT, OVERLAY” means a section of the territory within the jurisdiction of this
Ordinance in which additional requirements are imposed on certain properties within one or
more underlying zoning district.

“DISTRICT, ZONING” means a section of the territory within the jurisdiction of this Ordinance
for which uniform regulations over the erection,
construction, reconstruction, alteration, repair or
use of buildings, structures or land, including, but
not limited to: permitted uses; height; area; size;
and, intensity of use of buildings, structures, land,
and open spaces about buildings or structures, are
established by this Ordinance.

“DRAINAGE POND” means an artificially created
body of water which is required in connection with
a storm water management system, also known as a
detention basin or as a retention basin.
“DRIVE, INTERIOR ACCESS” means a way for internal vehicular movement in and around an individual lot or integrated center.

“DRIVE-THROUGH FACILITY” means a feature of an establishment which typically includes an opening in the exterior of the building, or the use of pneumatic dispatch or similar devices, which encourage or permit customers to receive goods or services while remaining in or on a motor vehicle.

“DRIVEWAY” means access for vehicular egress/ingress between the right-of-way of a public street or private street, and the minimum required setback line on a lot.

“DRIVEWAY, INTERIOR ACCESS” means a way for vehicular egress/ingress between the minimum required setback lines of separate lots or between lots within the boundaries of an integrated center.

“DWELLING” means any building, or portion of a building, which is designed or used primarily for residential purposes, including a single family dwelling, two family dwelling and multifamily dwelling but not including hotels, motels, boarding houses, lodging houses and a bed & breakfast.

“DWELLING, ACCESSORY LIVING QUARTERS”. See ACCESSORY LIVING QUARTERS.

“DWELLING, MANUFACTURED HOME” means a dwelling unit which is fabricated in one or more modules at a location other than the home site, by assembly-line type production techniques or by other construction methods unique to an off-site manufacturing process and which bears a seal certifying that it was built in compliance with the National Manufactured Housing Construction and Safety Standards Code.

“DWELLING, MODULAR” means a dwelling unit designed and built in a factory for installation or assembly at the building site, which bears a seal certifying that it was built in compliance with I.C. 16-41-27-1 et. seq.

“DWELLING, MULTI-FAMILY” means a building consisting of three (3) or more dwelling units including condominiums, with varying arrangements of entrances and party walls.
“DWELLING, SINGLE FAMILY” means an individual detached building containing one (1) dwelling unit which is either:

(a) built in compliance with the Indiana One and Two-Family Dwelling Code and the Town of Osceola Building Code; or

(b) a modular dwelling; or

(c) a manufactured home dwelling.

“DWELLING, TWO FAMILY” means a building consisting of two (2) dwelling units which may be either attached side by side or one above the other, and each dwelling unit having a separate or combined entrance.

“DWELLING UNIT” means a room or group of rooms designed and equipped exclusively for use as living quarters for only one (1) family, including provisions for sleeping, lawful cooking, and sanitary facilities. The term shall include mobile homes, modular dwellings and manufactured home dwellings but shall not include recreational vehicles.

“EIA-222” means Electronics Industries Association Standard 222, "Structural Standards for Steel Antenna Towers and Antenna Support Structures”.

“EXECUTIVE DIRECTOR” means the Executive Director of the Area Plan Commission of St. Joseph County, Indiana, or the designee of the Executive Director of the Area Plan Commission of St. Joseph County, Indiana.

“FAÇADE” means that portion of any exterior elevation of a building, extended from grade to the top of the parapet, wall or eaves, and extending the entire width of the front, side or rear building elevation.

“FAMILY” means one (1) or more persons related by blood, marriage, legal adoption, foster care or guardianship, living and cooking together as a single housekeeping unit, exclusive of incidental domestic servants and temporary, non-compensating guests; or, not more than three (3) persons not so related, living and cooking together as a single housekeeping unit. A person or persons residing with a family as hereinabove defined by reasons of placement by a publicly licensed placement agency shall be considered as members of that family.

“FITNESS CENTER” means a facility where individuals and families receive instructional training and perform activities such as but not limited to: aerobics, dance, floor exercises, gym-related equipment activities, martial arts and yoga, and also known as a Lifestyle or Wellness Center.

“FLAG” means a rectangular piece of fabric of distinctive design that is used as a symbol or as a decoration.
Chapter 19
Definitions

“FLOOR AREA” means:

(1) For single family dwellings and two family dwellings, the sum of all horizontal surface areas of all floors of all roofed portions of a building enclosed by and within the surrounding exterior walls or roofs, or the centerline(s) of party walls separating such buildings or portions thereof. The floor area of such a building shall exclude all areas with a vertical height clearance less than seventy-eight (78) inches, exterior open balconies, and open porches.

(2) For multifamily dwellings, the sum of all horizontal surface areas of all floors of all roofed portions of all buildings enclosed by and within the surrounding exterior walls or roofs, or the centerline(s) of party walls separating such buildings or portions thereof. However, the floor area of such a building shall not include the following:

(a) all areas with a vertical height clearance less than seventy-eight (78) inches;

(b) all exterior open balconies, and open porches;

(c) floor area or basement floor area devoted to off-street parking or off-street loading, including aisles, ramps and maneuvering space;

(d) floor area or basement floor area provided for recreational uses, available to occupants of two or more dwelling units within a project; or,

(e) basement floor area provided for storage facilities, allocated to serve individual dwelling units with a project.

“FLOOR AREA, GROSS” means for dwelling units, the total area, computed on a horizontal plane inclusive of finished basements, attached garages, entrances, hallways, stairways and other enclosed areas, but exclusive of unfinished basements, cellars and attics.

For commercial or industrial buildings or structures, the sum of all horizontal surface areas of all floors of a building or structure measured from the exterior faces of the exterior walls or from the center line of walls separating abutting buildings or structures.

“FLOOR AREA, MAIN” means that portion of the finished floor area located on the first floor of the primary building.

“FOUNDATION LANDSCAPING” means landscaping installed along or in relation to the perimeter foundation of a building or structure.

“FOUNDATION LANDSCAPING AREA” means the area along or in proximity to the perimeter foundation of a building or structure which is required to be set aside for the installation of foundation landscaping.
“**FRONTAGE**” means all the property of a lot fronting on a street right-of-way.

“**FULL CUTOFF**”. See CUTOFF, FULL.

“**GAME COURT**” means a type of recreation facility which consists of an unpaved or paved, accessory, surface area of ground open and essentially unobstructed to the sky, on the same lot as the primary building, designed and intended for the playing of a recognized sport as an accessory, recreational activity by the occupants and guests of the primary building, which may include fencing, screening, nets, goals, or other necessary appurtenances required for recreational use.

“**GARAGE**” means an accessory building to a residential use, or an enclosed area attached to or integrated into a residential building, which is primarily designed and intended to be used for the storage of the private vehicle(s) for the occupant(s) of said residence and is not a separate commercial enterprise available to the general public.

“**GASOLINE SERVICE STATION**” means any building, land area or other premises or portion thereof, used or intended to be used for the retail dispensing or sales of vehicular fuels, which may include as an accessory use: minor automotive repairs; the sale and installation of lubricants, tires, or batteries; car washes; and, similar uses. Such establishments shall provide a facility where gasoline and other motor fuels are stored and subsequently dispensed by means of fixed, approved dispensing equipment by customers or employees.

“**GLARE**” means the harsh appearance of a direct source of light as discernible from adjacent properties and which causes annoyance, discomfort or loss of visual performance and visibility.

“**GRADE**” means the average level of the finished surface of the ground five (5) feet from the building, structure or proposed building pad; provided, however, when referring to "street grade" the term "**GRADE**" shall mean the slope of a street specified in percentage (%) terms.

“**GREENWAY**” means a greenway may include any of the following: (i) a linear open space established along either a natural corridor (i.e., a riverfront, stream valley or ridge line) or over land (i.e., along a railroad right-of-way, a canal, a scenic road or other route) converted to or available for recreational use; (ii) any natural or landscaped course for pedestrian or bicycle passage; or, (iii) an open space connector linking parks, natural features, cultural features, or historic sites with each other or with residential, employment or shopping areas, which are designated on an officially adopted plan of the Town or the County.

“**GROUP HOME**” means a residential facility for children which, in addition to providing food and shelter, may also provide some combination of personal care, social services, counseling services or transportation to residents and is licensed by the State of Indiana.
Chapter 19
Definitions

“GROUP RESIDENCE” means a residential facility which, in addition to providing food and shelter, may also provide some combination of personal care, social services, counseling services or transportation to residents. Group residences would include student housing, halfway houses, work release houses or any other similar form of residential facility for individuals which do not qualify as a family or any other form of residential facility expressly provided for in this Ordinance.

“GUN AND GUNSMITH SHOPS” means any location where firearms are sold and/or repaired, or where ammunition is being sold and/or reloaded as the primary business items.

“HEALTH CARE FACILITY” means a place where the diagnosis, treatment, and prevention of disease, illness, injury, and other physical and mental impairments are conducted, such as but not limited to clinics, diagnostic centers, emergency care and medical laboratories.

“HISTORIC LANDMARK” means a building, structure, object, district, land use, area or site of historical significance and designated as an historic landmark on the Historic Preservation Plan.

“HISTORIC PRESERVATION” means the research protection, maintenance, restoration, rehabilitation, reconstruction or development of historic landmarks and Historic Preservation Districts. For the purposes of this Ordinance, this definition shall apply to the preservation of exterior features only.

“HISTORIC PRESERVATION COMMISSION” means the Historic Preservation Commission established under the provisions of this Ordinance.

“HISTORIC PRESERVATION DISTRICT” means a geographically definable area with a significant consideration of buildings, structures, sites, spaces, or objects unified by past events, physical development, design, setting, materials, workmanship, a sense of cohesiveness, or related historic association and designated as an historic preservation district on the Historic Preservation Plan.

“IMPROVEMENT” means any man-made, immovable item which becomes part of, placed upon, or is affixed to real estate.

“IMPROVEMENT LOCATION PERMIT” means a permit stating that the proposed erection, construction, enlargement or moving of a building or structure, and uses thereof, complies with the provisions of this Ordinance, or a building permit which includes a site plan review or which authorizes the proposed erection, construction, enlargement or movement of any sign.

“INCIDENTAL” means a minor occurrence or condition which is customarily associated with a permitted use and is likely to ensue from normal operations.
“INTERIOR YARD”. See YARD, INTERIOR.

“INTEGRATED CENTER” means an area of development (business / commercial, industrial, or any combination of business / commercial, industrial and residential uses) of one or more lots or outlots, comprised of:

(a) two or more individual, non-related and separately operated uses in one building sharing common site facilities;

(b) one or more buildings containing non-related and separately operated uses occupying a common site, which utilizes one or a combination of common site facilities, such as driveways, parking areas, loading areas, interior access drives, maintenance and similar common services; or,

(c) one or more buildings containing non-related and separately operated uses occupying individual sites, which are interrelated by the utilization of one or a combination of common facilities, such as driveways, internal public street or private street network developed in accordance with an approved master plan or preliminary plan of a subdivision, parking areas, loading areas, maintenance or other services.

“KENNEL” means any premise or portions thereof on which more than four dogs, cats or other household domestic animals over months of age are kept, or on which more than two such animals are maintained, boarded, bred, or cared for, in return for renumeration, or are kept for the purpose of sale for a period of greater than twenty-four (24) hours.

“LAWFUL COOKING” means a room or area in which food may be prepared and cooked and which contains the following:

(a) A kitchen sink in good working condition and properly connected to an approved water supply and approved sewer/septic system. The sink must provide an adequate amount of water under pressure, both unheated and heated, to no more than 120 degrees Fahrenheit;

(b) Cabinets, shelves, counters or tables used for storage of food, eating, drinking or cooking equipment and utensils shall be of sound condition furnished with surfaces that are easily cleanable and that will not impart any harmful effect to food; and,

(c) A stove and oven, either singly or in combination, for cooking food, and a refrigerator of at least 7.5 cubic foot in size for the safe storage of food at temperatures of less than 45 degrees Fahrenheit. These appliances shall be properly installed with all necessary connections for safe, sanitary and efficient operation and shall be maintained in good working condition.
Chapter 19
Definitions

“LEGALLY ESTABLISHED” means the condition of being in compliance with all applicable development regulations at the time of recording, construction or erection of a lot, building, structure, use or sign.

“LEGALLY ESTABLISHED NONCONFORMING”. See NONCONFORMING BUILDING OR STRUCTURE, LEGALLY ESTABLISHED OR NONCONFORMING USES, LEGALLY ESTABLISHED.

“LOADING AREA” means any area maintained and intended for the maneuvering and temporary parking of vehicles while transferring goods or materials to and from a facility. Loading area includes the loading space and maneuvering area required to enter the loading space.

“LOADING, OFF-STREET” means a loading area located completely on a lot and accessed via interior access drives, interior access driveways, access drives, or driveways in which no individual loading spaces gain direct access to a public street or private street.

“LOADING SPACE” means a hard-surfaced, off-street area used for the temporary parking of a commercial vehicle while transferring goods or materials to and from a facility.

“LOT” means:

1. A piece, parcel, plot or tract of land designated by its owner or developer to be used, developed or built upon as a unit under single ownership or control and may consist of:

   a. a single lot of record; or,
   b. a combination of complete lots of record.

2. For purpose of this definition, the ownership of a lot is further defined to include:

   a. the person(s) who holds either fee simple title to the property or is a life tenant as disclosed in the records of the assessor; or,
   b. a long-term lessee (but only if the lease is recorded among the records of the St. Joseph County Recorder and has a term (exclusive of non-exercised extensions and renewals) of at least twenty-five (25) years remaining before its expiration at the time of applying for a permit).
“LOT AREA” means the total area of a lot bounded on all sides by any front lot line, rear lot line, and side lot line, provided, however, lot area shall not include: any area lying within the right-of-way of any public street or private street or easement for surface access into the subject lot or adjoining lots; land reserved for drainage ponds, wetlands; or lands subject to periodic flooding. No part of the minimum lot area required under the applicable district, commitment, variance grant or development plan approval may be satisfied by land that is under water.
“LOT, CORNER” means a lot, abutting two (2) or more streets at their intersections, or upon two parts of the same street forming an interior angle of less than one-hundred and thirty-five (135) degrees. On corner lots, any yard which abuts a street right-of-way line shall be considered a Front Yard.

“LOT COVERAGE” means the total ground area within the lot or project covered by the primary structure plus any accessory structures (including decks over 30" above grade, above-ground pools, in-ground pools, garages, carports, storage sheds, or any under roof areas), excluding driveways, walkways, fences, grade level decks and patios, and walls not attached in any way to a roof.

“LOT, DOUBLE FRONTAGE” means a lot abutting two (2) parallel streets, or abutting two (2) streets which do not intersect at the boundaries of the lot.

“LOT, INTERIOR” means a lot which is not a corner lot, or a double frontage lot.

“LOT LINE” means the line of separation of a lot from any abutting street or adjoining lot.

“LOT LINE, FRONT” means the lot line separating a lot from any abutting street or limited access highway. Corner Side Yard - on corner lots, any yard which abuts a street right-of-way line shall be considered a Front Yard.

“LOT LINE, REAR” means a lot line which is opposite and most distant from the front lot line, or in the case of a triangularly shaped lot, a line ten (10) feet in length within the lot, parallel to and at the maximum distance from the front lot line. However, in the case of a corner lot, any lot line which intersects with a front lot line shall not be considered a rear lot line.

“LOT LINE, SIDE” means any lot line not designated as a front lot line or rear lot line.

“LOT OF RECORD” means a lot which is part of a final plat recorded in the Office of the Recorder of St. Joseph County, Indiana, or for which a deed has been so recorded prior to December 31, 1993.

“LOT WIDTH” means the full width of a lot measured along the minimum front yard and minimum building setback line required by this Ordinance.

“LUMINAIRE” means a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute light on any property, to position and protect the lamps and to connect the lamps to the power supply.

“LUMINOUS TUBE LIGHTING” means gas-filled tubing which, when subjected to high voltage, becomes luminescent in a color characteristic of the particular gas used, e.g. neon, argon, etc.
“MANUFACTURING” means the mechanical or chemical transformation of materials or substances into new products or into a useable form. MANUFACTURING may include the creation of products (including subsequent assembly of previously manufactured parts), or the blending of materials such as lubricating oils, plastics, resins or liquors.

“MANUFACTURED HOME DWELLING”. See DWELLING, MANUFACTURED HOME.

“MANUFACTURING RETAILER” means a food sales and service establishment, where food or beverage products are produced in a limited quantity (not industrial manufacturing) sufficient to support on-site sales as a primary or accessory portion of the on-site business. Examples include confectioners, bakeries and brew pubs.

“MINERAL EXTRACTION” means includes mining, quarrying and removal of earth materials, such as but not limited to and, gravel, topsoil or other aggregate, and the screening, crushing or washing of the extracted materials.

“MINI (SELF STORAGE) WAREHOUSE”. See WAREHOUSE, MINI (SELF STORAGE).

“MOBILE HOME” means any vehicle or portable structure designed for long term occupancy, containing sleeping accommodations, a flush toilet, a bathtub or shower, kitchen facilities, and plumbing and electrical connections providing for attachment to outside systems; designed to be transported after fabrication on its own wheels, flatbed truck, or other trailer or detachable wheels; which, when arriving at the site where it is to be occupied as a complete dwelling unit, including major appliances, and ready for occupancy except for minor and incidental unpacking and assembly operation, is located on foundation supports, and is connected to external utilities and electrical system. MOBILE HOME does not include Modular Homes or Manufactured Homes, Type A.

“NON CUTOFF”. See CUTOFF, NON.

“NON-WHIP ANTENNA”. See ANTENNA, NON-WHIP.

“NONCONFORMING” means the state of not being in compliance with the permitted use or development standards regulations of the district to which the real estate is zoned pursuant to this Ordinance.

“NONCONFORMING BUILDING OR STRUCTURE” means any building or structure erected or constructed but which fails to conform to the present requirements of the district.
Chapter 19
Definitions

“NONCONFORMING BUILDING OR STRUCTURE, LEGALLY ESTABLISHED” means any continuous, lawfully established building or structure erected or constructed:

(a) prior to the time of adoption, revision or amendment of this Ordinance but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the district;

(b) pursuant to a granted variance; or,

(c) prior to a right-of-way acquisition or access rights acquisition by a governmental entity but which fails by reason of such right-of-way acquisition or access rights acquisition by a governmental entity to conform to the present requirements of the district.

“NONCONFORMING USE” means any land use which fails to conform to the present requirements of the district.

“NONCONFORMING USE, LEGALLY ESTABLISHED” means any continuous, lawful land use having commenced: (a) prior to the time of adoption, revision or amendment of this Ordinance but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the district; or (b) pursuant to a granted variance.

“OCCUPANCY” means the use to which a building or premises is devoted.

“OFFICE” means a place in which business, clerical, or professional activities are conducted; a place of business of a commercial, industrial or governmental organization, or of a professional person or business, such as but not limited to: accountants, attorneys, business offices, court houses, call center, dentists, dispatchers, doctors, insurance, labs, optometrists, private investigators, real estate and telemarketers conducted entirely within a primary building, and where no bulk storage, display or sales of merchandise is permitted. Also known as a “professional office”.

“OPEN SPACE” means a lot, a portion of a lot or common area set aside as a playground, plaza, park, parkway, greenbelt, or other landscape area and maintained free from buildings or structures, except for those structures which are directly related to and essential to the use of the open space for recreational purposes, including, but not limited to swimming pools, play equipment for youngsters, game courts and picnic tables. In the case of individual residential lots, open space shall be an area landscaped with grass, trees, shrubbery or other suitable vegetative ground cover and maintained free from buildings or structures.

“OUTDOOR DISPLAY AREA” means that part of lot used for the display of merchandise or goods available for purchase or lease from the business located on that lot.

“OUTDOOR LIGHT FIXTURE” means any outdoor electrically powered illuminating devices, outdoor light or reflective or refractive surfaces, lamps and similar devices including all parts
used to distribute the light or protect the lamp, permanently installed or portable, used for flood lighting, general illumination or location identification.

“OUTDOOR STORAGE”. See STORAGE, OUTDOOR.

“PARK, ACTIVE” means an open space improved with active recreational facilities, including but not limited to: basketball and tennis courts; baseball, golf course, football, soccer or softball fields; pavilions; playgrounds, etc., and maintained for the continued use and enjoyment of area residents.

“PARK, PASSIVE” means an open space improved with passive features, including but not limited to: park benches and walking trails and maintained for the continued use and enjoyment of area residents.

“PARKING AREA” means any area other than an open exhibition or display area (not inclusive of interior access drives, driveways, interior access driveways and access drives) intended for the temporary storage of automotive vehicles including parking spaces and the area allocated to the egress/ingress of automotive vehicles to and from the actual parking space.

“PARKING, OFF-STREET” means a parking area located completely on a lot and accessed via drives or driveways to a public or private street, and in which no individual parking spaces gain direct access to a public or private street, and also known as a Parking Lot.

“PARKING, ON-STREET” means an area located partially or completely within the right-of-way of a public street or private street where vehicles are permitted to park.

“PARKING LOT, ACCESSORY” means the use of a lot in a Residential District or Office Buffer District as a parking lot where such parking lot is accessory to a permitted use which is either: (i) located on an adjacent lot in an Office Buffer, Commercial or Industrial District; or, (ii) located in an Office Buffer, Commercial or Industrial District separated from the lot in a Residential District by a street or alley not over thirty (30) feet in width. Such Accessory Parking Lots are intended to create an effective buffer between residential uses and an Office Buffer, Commercial or Industrial use and, where practical, are developed in compliance with all off-street parking standards and all landscaping standards applicable parking lots in an Office Buffer, Commercial or Industrial District.

“PARKING SPACE” means that portion of the parking area used only for the temporary placement of an operable motor vehicle.

“PENNANT”. See SIGN, PENNANT.

“PERFORMANCE BOND” means a legally binding agreement whereby the developer or subdivider posts a surety for the construction of improvements, installations and lot improvements required by this Ordinance, any other applicable ordinances of the Town of
Chapter 19
Definitions

Osceola, and any requirements, covenants, conditions or commitments which may be imposed pursuant to this Ordinance.

“PERMITTED USE” See USE, PERMITTED.

“PERSONAL SERVICE ESTABLISHMENT” means a business that provides an intangible commodity to a consumer that is primarily consumed on site such as, but not limited to barber, hairdresser, massage, nail salon, office activities, pet grooming, photography studio and tanning. Accessory sales of products directly associated with the PERSONAL SERVICE ESTABLISHMENT is permitted as long as such sales are clearly incidental and subordinate to the principle activity.

“PLAN COMMISSION”. See AREA PLAN COMMISSION.

“PLAN REVIEW COMMITTEE (PRC)” means a committee of technical consultants established to provide the Executive Director, and the Building Commissioner / Zoning Administrator with technical assistance in the review of plans for compliance the provisions of this Ordinance and other applicable rules and regulations of federal, state or local agencies.

“PRIMARY BUILDING” means the building in which the primary permitted use of the lot is conducted.

“PRIMARY USE” means a permitted use of land or a permitted use of a building or structure on land which is allowed as a matter of right in the district applicable to the land, subject only to compliance with the development standards applicable to that district.

“PUBLIC SERVICE and UTILITY USE” means a use of land providing a variety of utility services over a wide geographic area, such as but not limited to: utility substations for electrical and gas distribution; radio and television transmitting or relay station and antenna towers and arrays; filtration plants, pumping stations and water reservoirs and towers; and sewage treatment plants.

“RECREATIONAL FACILITY” means a facility used in the pursuit of athletic and exercise activities, such as but not limited to: baseball & softball; batting cages; bowling alleys; golf ranges; gymnastics; swimming pools; court-style sports such as basketball, soccer and volleyball, game machines, go-cart tracks, skateboard facilities, model car or model railroad tracks, ice and roller skating rinks, roller coasters, water slides, and any and all assortment of mechanical rides, amusement booths, restaurants, and snack areas etc.
“RECREATIONAL VEHICLE” means a vehicular-type portable structure without permanent foundation that can be towed, hauled or driven and primarily designed as a temporary living accommodation for recreational, camping and travel use, including, but not limited to: travel trailers, truck campers, camping trailers, self-propelled motor homes; personal watercrafts; and, boats.

“RECYCLING FACILITY” means an operation that collects and processes, in part or in whole, salvageable waste material and subsequently sorts, cleans, combines and/or reduces (dismantles) such material for subsequent reuse, and which is transported off-site to be reprocessed into new materials. Salvageable waste material includes but is not limited to brick, chemical products, cloth, concrete, electronics, glass, household products, paper, plastics, rubber, metals, motor vehicles and wood products. RECYCLING FACILITY includes a transfer station.

“RELIGIOUS USE” means a land use, and all buildings and structures associated therewith, devoted primarily to the purpose of divine worship on a regular basis, together with reasonably related accessory uses which are subordinate to and commonly associated with the primary use, which may include but are not limited to educational, instructional, social, residential or child care ministry uses.

“RESIDENTIAL FACILITY FOR DEVELOPMENTALLY DISABLED” means a residential facility established under IC 12-11-1.1-1 (e)(1) and (2) and further regulated by IC 12-28-4-8 for not more than eight (8) individuals.

“RESIDENTIAL FACILITY FOR MENTALLY ILL OR DISABLED” means a residential facility as regulated and licensed by the State of Indiana, and further regulated by IC 12-28-4-7 where such facilities must be separated by 3,000 in a residential area, as measured between lot lines.

“RETAIL SALES” means the sale of commodities or goods directly to the consumer including but not limited to antique shop, bakery shop, convenience store, department store, florist, grocery store and hardware store.

“RIGHT-OF-WAY” means specific and particularly described land, property, or interest therein devoted to and subject to the lawful use, typically as a thoroughfare for passage of pedestrians, vehicles, or utilities, as set forth in a written grant, declaration or conveyance that is recorded in the Office of the Recorder of St. Joseph County, Indiana.

“RIGHT-OF-WAY, EXISTING” means the total right-of-way width of a street as created or expanded by the most recent grant, declaration or conveyance that is recorded in the Office of the Recorder of St. Joseph County, Indiana.
“RIGHT-OF-WAY, PUBLIC” means specific and particularly described strip of land, property, or interest therein dedicated to and accepted by the municipality, County or State to be devoted to and subject to use by the general public for general transportation purposes or conveyance of utilities whether or not in actual fact improved or actually used for such purposes, as set forth in a written grant, declaration or conveyance that is recorded in the Office of the Recorder of St. Joseph County, Indiana.

“RIGHT-OF-WAY, PRIVATE” means specific and particularly described strip of privately-held land devoted to and subject to use for general transportation purposes or conveyance of utilities whether or not in actual fact improved or actually used for such purposes, as set forth in a written grant, declaration or conveyance that is recorded in the Office of the Recorder of St. Joseph County, Indiana.

“RIGHT-OF-WAY, PROPOSED” means the recommended right-of-way width for a street based upon that street's classification in the officially adopted Thoroughfare Plan for the Town.

“ROOF-MOUNT” means the placement of an antenna, antenna array or flag pole on the roof of an existing building or structure.

“SALVAGE YARD” means an operation that collects and processes, in part or in whole, parts from salvageable waste material for reuse and resale from the property as a retail business. SALVAGE YARD includes junk yard and auto salvage, but does not include antique shop, pawn store and not-for-profit operations where the salvageable material is within a completely enclosed building.

“SEASONAL SALES” means a temporary use established for a fixed period of time for the retail sale of seasonal products, including, but not limited to such items as food, Christmas trees, pumpkins, and live plants. A temporary seasonal retail sales use may or may not involve the construction or alteration of any permanent building or structure.

“SEMI CUTOFF”. See CUTOFF, SEMI.

“SEMI-TRAILER” means a freight trailer, tanker or other large vehicles or machinery with a forward portion designed to be supported by a fifth wheel device of a truck tractor when in motion.

“SETBACK” means that distance measured perpendicularly from the lot line to the closest point of the building, structure, sign structure, parking area or any other permanent improvement.

“SETBACK LINE” means a line that establishes the minimum distance that a building, structure, or portion thereof can be located from a lot line or right-of-way line.
“SETBACK, MINIMUM” means the smallest distance required by this Ordinance from a lot line to the closest point of a building, structure, sign structure, parking area, loading area, storage area, or any other permanent improvement. A minimum setback may be a minimum front setback, minimum side setback or minimum rear setback. Said distance shall be measured perpendicularly from the lot line.

“SIGN” means any object, device, display, structure, fixture, placard, announcement, declaration, demonstration or insignia, or part thereof, used to: draw attention; provide direction, information, identification; or, advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

“SIGN, A-FRAME” means a portable sign containing two (2) sign faces and whose framing is hinged at the apex at an angle less than forty-five (45) degrees.

“SIGN, BILLBOARD”. See SIGN, OFF-PREMISE.

“SIGN, ANIMATED” means any sign, or any portion thereof, which moves, assumes any motion, uses a change in lighting to depict motion or create a special effect or scene, or gives the illusion of moving.

“SIGN, BANNER” means a temporary sign of lightweight fabric or similar material, mounted to a pole or building.

“SIGN, BUILDING” means any sign placed upon or supported by a building, including, but not limited to: wall signs, projecting signs, awning signs, canopy signs, marquee signs, suspended signs and roof signs.

“SIGN CABINET” means the frame of a sign which contains and supports the sign face. Sign cabinet does not apply to painted signs or one-piece, non-illuminated, individual letter signs.

“SIGN, CHANGEABLE COPY” means a sign, or portion thereof, where the message copy includes characters, letters or illustrations that can be physically altered without altering the primary surface of the sign. The message copy of a changeable copy sign may be changed manually in the field or through remote electronic or electric techniques. Methods of changing the message copy include the use of: (a) changeable letters, numbers, symbols and similar characters; (b) changeable pictorial panels; or, (c) rotating panels or other similar devices.
“SIGN, ELECTRONIC MESSAGE CENTER (EMC)” means a sign, or portion thereof, where the message copy includes characters, letters or illustrations that can be changed or rearranged electronically without touching or physically altering the primary surface of the sign. Message copy may be changed in the field or from a remote location.

“SIGN FACE”. See SIGN SURFACE.

“SIGN, FREESTANDING” means a sign principally supported by one or more columns, poles, or braces placed in or upon the ground. May also be referenced as ground signs, pole signs, pylon signs, or monument signs.

“SIGN, INCIDENTAL” means a sign relating to the lot or use thereof which provides information or directions necessary or convenient for visitors coming on the lot, including but not limited to signs marking entrances and exits, parking areas, circulation direction, restrooms and pick-up or delivery areas.

“SIGN, MENU BOARD” means a permanent sign located in connection with a drive-through facility, which is oriented toward motor vehicles located in a drive-through lane, and which provides information to the occupants of motor vehicle, related to the products and services available at the drive through facility.

“SIGN, NONCONFORMING” means a sign which qualifies as a legally established nonconforming structure.

“SIGN, OFF-PREMISE” means a sign which directs attention to an activity, business, entertainment, commodity, product, profession or service conducted, manufactured, offered or sold at a location other than the premises on which the sign is located.

“SIGN, ON-PREMISE” means a sign which directs attention to an activity, business, entertainment, commodity, product, profession or service conducted, manufactured, offered or sold on the premises where the sign is located.

“SIGN, PORTABLE” means any sign or sign structure not securely attached to the ground or other permanent structure, or a sign designed to be transported from place to place, including but not limited to: signs transported by means of wheels; a sign attached to a- or t-frames; a temporary menu and sandwich board sign; a balloon used as a sign; table or patio umbrellas which include a sign; and, a sign attached to or painted on a vehicle parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operation of the business.
Chapter 19
Definitions

“SIGN, PROJECTING” means any sign which is affixed to a building or wall in such a manner that the leading edge extends more than eighteen (18) inches beyond the surface of such building or wall face.

“SIGN, ROOF” means any sign mounted on the main roof portion of a building or on the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such a building.

“SIGN STRUCTURE” means any structure including any pole, base, foundation, support, tie rods, upright, bracing or framework which supports or is capable of supporting any sign.

“SIGN SURFACE” means the surface of the sign upon, against, or through which the message of the sign is exhibited.

“SIGN, T-FRAME” means a portable sign utilizing an inverted "T" style of framing to support the sign.

“SIGN, TEMPORARY” means any sign or sign structure which is not permanently affixed or installed, and is intended to be displayed for limited periods only. Examples of temporary signs include, but are not limited to signs erected or placed in connection with the following activities or occurrences: sale or lease of real estate; announcement of pending construction; special event; political campaign; garage sale; home improvement/ remodeling; model home; and, seasonal/holiday signs.
“SMALL WIND ENERGY CONVERSION SYSTEM (SWECS)” means a WIND ENERGY
CONVERSION SYSTEM consisting of a wind turbine with its associated tower and control
or conversion electronics, whose dual purpose is to primarily reduce on-site consumption of
utility power, and to produce clean on-site energy for uses such as but not limited to homes,
farms, schools and businesses. A SWECS can consist of a system either designed to be
firmly anchored into the ground using a self-supporting tower, or firmly anchored to the sides
or roof of the primary or accessory structure, or a combination thereof.

“SPANDREL” means a roof-like structure that covers the gasoline pump dispenser, serves as a
second-tier canopy, may be a lighting source for the dispensing area, may identify the
gasoline pumps by numerical or other designation, and may display signs.

“SPECIAL EVENT” means any of the following occurrences: commencement of construction;
fairs, carnivals, circus or festivals; grand openings; Independence Day; Labor Day; listing of
properties for sale or lease; Memorial Day; posting of notices at the direction of a
governmental agency; Presidents Day; Veterans Day; or other occurrence officially
recognized by the Town as a special event for the Town.

“SPECIAL EXCEPTION USE” See USE, SPECIAL EXCEPTION.

“STAFF” means the Executive Director of the Area Plan Commission; the Building
Commissioner; the Zoning Administrator; any employee of the Area Plan Commission; any
attorney, agent or designee of the Executive Director; any attorney, agent or designee of the
Building Commissioner; any attorney, agent or designee of the Zoning Administrator; or, any
other employee of the Town related to the review, recommendation or approval process for
development.

“STANDARDS” means a specific and detailed listing of materials and construction methods,
including standards of construction and design, as adopted by the Town.

“STORAGE, OUTDOOR” means the storage of any product, goods, equipment, machinery,
vehicles, boats, supplies, building materials or commodities, including raw, semi-finished
and finished materials, provided however, that vehicular parking and the display of
automobiles, boats, trucks or farm equipment associated with a legally established dealership
shall not be deemed outdoor storage.

“STREET” means any public right-of-way or private right-of-way, with the exception of alleys,
especially open to the sky and open and dedicated to the general public for the purposes of
vehicular and pedestrian travel affording access to abutting property, whether referred to as a
street, lane, road, drive, expressway, arterial, thoroughfare, highway, or any other term
commonly applied to a right-of-way for said purposes. A street may be comprised of
pavement, shoulders, gutters, curbs, sidewalks, parking spaces, and similar features.
“STRUCTURE” means anything constructed or erected, the use of which requires location on the ground, or attachment to something having a fixed location on the ground such as but not limited to buildings, decks and like structures over thirty (30) inches in height, mobile homes, fences, walls, towers, antenna and signs.

“STRUCTURE-MOUNT” means the placement of an antenna or antenna array on an existing structure such as a water tower, athletic field light standards or electric-line transmission towers.

“SUBDIVIDER” means the owner, developer, or authorized agent of the owner or developer of real estate, who is responsible for all designs, reservations and Improvements related to the petition for primary or secondary plat approval or the development of a subdivision.

“SUBDIVISION” means the division of a parcel of land into two (2) or more lots, parcels, sites, units, plats, or interests for the purpose of offer, sale, lease, or development, either on the installment plan or upon any and all other plans, terms, and conditions, including resubdivision. SUBDIVISION includes the division or development of land opened for residential and nonresidential uses, whether by deed, metes and bounds description, devise, intestacy, lease, map, plat, or other recorded instrument.

“SURFACE-MOUNT” means the placement of an antenna or antenna array on the existing or proposed surface of a building or structure.

“TELECOMMUNICATIONS” means the transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

“TELECOMMUNICATIONS ANTENNA”. See ANTENNA, TELECOMMUNICATIONS.

“TELECOMMUNICATIONS SERVICE” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

“TELECOMMUNICATIONS TOWER” means a structure more than ten (10) feet tall, built primarily to support one or more telecommunications antennas.

“TEMPORARY USE”. See USE, TEMPORARY.

“THOROUGHFARE PLAN” means that portion of the Comprehensive Plan, or other officially adopted plan of the Town, which sets forth recommendations for major street alignments and street classifications.

“TOWN” means the Town of Osceola, Indiana.
“TOWN COUNCIL” means the Town Council of the Town of Osceola, Indiana.

“TOWN ENGINEER” means the Town Engineer of the Town of Osceola, Indiana.

“TOWNHOUSE” means a multifamily dwelling with all dwelling units constructed in a row; with each dwelling unit having an individual front and rear ingress and egress.

“TRAILER” means a non-automotive vehicle designed to be hauled on the road.

“TRUCK TERMINAL” means an area and buildings used for the temporary parking of motor freight vehicles or trucks of common carriers during unloading and loading of cargo or freight and where cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation. A TRUCK TERMINAL is also known as a distribution center.

“UNDERGROUND FACILITIES” means an accessory structure which is at least seventy-five (75) percent subterranean, utilized for storage of personal property or as a temporary shelter for people, such as a storm cellar or fallout shelter.

“USE” means the purpose or activity for which land, buildings or structures are designed, arranged, or intended or which land, buildings or structures are occupied or maintained.

“USE, CONDITIONAL” means a use which, by its nature and potential impact upon adjacent property and the Town as a whole, requires review and approval by the Board of Zoning Appeals.

“USE, PERMITTED” means the use of land or the use of a building or structure on land which is allowed, either as a matter of right or under limited conditions (i.e., as a special exception use, an accessory use, a home occupation, or a temporary use) in the district applicable to the land.

“USE, SPECIAL EXCEPTION” means the use of land or the use of a building or structure on land which is allowed in the district applicable to the land only through the grant of a special exception use.

“USE, TEMPORARY” means a land use established for a limited and fixed period of time with the intent to discontinue such use upon the expiration of the time period.

“VARIANCE” means permission granted by the Board of Zoning Appeals to depart from the literal requirements of this Ordinance.

“VEHICULAR CANOPY” means a roofed, open, drive through structure designed to provide temporary shelter for vehicles and vehicle occupants while receiving a business service.
“VETERINARY” means a place of business where the medical or surgical treatment of animals, especially domestic animals, is provided. VETERINARY does not include the boarding of animals for more than 24 hours.

“WAGERING, OFF-TRACK PARI-MUTUAL FACILITY” means a location, other than a racetrack, authorized by the Indiana Horse Racing Commission, at which pari-mutual wagering is conducted.

“WAREHOUSE” means a building or structure for the storage and/or transfer of goods, materials or products awaiting shipment to another location for wholesale or retail trade. WAREHOUSE may also include but not be limited to a DISTRIBUTION CENTER and TRUCK TERMINAL.

“WAREHOUSE, MINI (SELF STORAGE)” means a building or structure designed and used for the purpose of renting or leasing individual storage spaces to occupants who are to have access to such for the purpose of storing and removing personal property.

“WHIP ANTENNA”. See ANTENNA, WHIP.

“WIND ENERGY CONVERSION SYSTEM” means any combination of equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire or other component used in the system. A WIND ENERGY CONVERSION SYSTEM includes, but is not limited to, a small wind energy conversion system and a wind energy facility.

“WIND ENERGY FACILITY” means an electricity generating facility consisting of one (1) or more commercially-rated wind turbines under common ownership or operating control, and whose main purpose is to supply electricity to off-site customer(s), and includes but is not limited to substations, MET Towers, cables/wires and operations and maintenance buildings accessory to such facility. A WIND ENERGY FACILITY is also known as a “wind farm” or a “wind power plant”.

“WIRELESS TELE-COMMUNICATIONS FACILITY” means any facility constructed by or constructed for use by a licensed wireless telecommunication service provider and which consists of the equipment and structures involved in the receiving and transmitting of electromagnetic waves associated with wireless telecommunication services.

“YARD” means an open space, unobstructed to the sky, extending fully across the lot while situated between the front lot line, side lot line or rear lot line and the established front building line, side building line or rear building line.

“YARD, INTERIOR” means an open space, unobstructed to the sky, extending out from the wall of a multifamily dwelling.
“YARD SALE”. See GARAGE SALE.

“ZONING ADMINISTRATOR” means the individual designated by the Council as having the responsibility for the interpretation and administration of the Zoning Ordinance of the Town.