



Zoning Ordinance

Module 1: General Provisions and Development Review

Policy Committee Draft

December 2012

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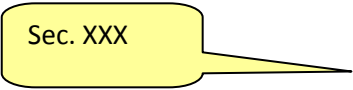
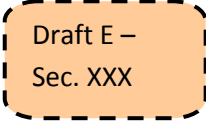



Note to Draft Reviewers

This draft Zoning Ordinance shows when language in the existing Zoning Ordinance has been deleted, modified or retained. Changes in punctuation and capitalization are not shown with editing marks. Seemingly insignificant edits are made at times in an effort to consistently use certain terms. For example, the word “allowed” may be show stricken and replaced with the word “permitted.” One word is not necessarily better than the other. The change is made for the sake of consistency throughout the document.

Here are a few notes that should help in the review of this draft.

Editing Marks

| | |
|---|---|
| Existing Text | Text from the existing Zoning Ordinance that has not been modified. |
| Added Text Deleted Text | Text that has been added to or deleted from the existing regulations |
| COMMENTARY / QUESTON / NOTE | Poses questions and provides commentary to the draft reviewers. Boxes marked as “COMMENTARY” are intended to remain in the adopted document. Questions and Notes should be addressed and deleted prior to adoption. |
|  | Notes within the margin that show the location in the Zoning Ordinance of text that is existing, modified or deleted. The reference in the call-out applies to all subsequent text in the draft until the next call-out appears in the margin. |
|  | Shows where language from Draft E has been copied over to this draft. A citation is provided. |
|  | Idea brought up in Zoning Ordinance Critique |

Module 1

The purpose of Module 1 is to create the first 3 articles of the New Zoning Ordinance: General Provisions, Development Review Bodies and Development Review Procedures. The Review Bodies and Review Procedures will be similar except that the first shows the responsibilities of various public decision makers and officials, while the second shows the process needed for a final decision for each type of development review application.

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ARTICLE 1 GENERAL PROVISIONS

Note to Reviewers: This Article establishes mundane but important provisions that apply to the entire Zoning Ordinance. Very little material suitable for this Article was in the existing Zoning Ordinance, hence the abundance of underlined words.

Art.1,
Sec. 1

Sec. 1.1. Short Title

This ~~Code section~~ Zoning Ordinance shall be is known, and may be cited as, the Elkhart County Zoning Ordinance. References to "this Ordinance" are interpreted as references to this Zoning Ordinance.



Sec. 1.2. Purpose

Note to Reviewers: Some of these statements may disappear, depending on the actual content of the adopted ordinance.

The purpose of this Ordinance is to guide the growth and development of Elkhart County in accordance with the Elkhart County Land Use Plan for the following purposes:

1.2.1 Basic Rights

To secure adequate light, air, convenience of access and safety from fire, flood, and other dangers which may include providing adequate open spaces for light, air and outdoor uses.

1.2.2 General Welfare

To promote the public health, safety, comfort, convenience and general welfare of the County.

1.2.3 Development and Growth

To promote the orderly, responsible and beneficial development and growth of the areas within the County in accordance with Elkhart County Land Use Plan.

1.2.4 Character

To protect the character and stability of agricultural, residential, institutional, commercial, industrial and natural areas.

1.2.5 Circulation

To minimize or avoid congestion on public streets and to ensure safe, convenient and efficient traffic circulation.

1.2.6 Environmental Integrity

To preserve and enhance the scenic beauty, aesthetics and environmental integrity of the County.

Draft E –
Sec. 1.04

Article 1 General Provisions

Sec. 1.3. Authority

1.2.7 Compatibility

To bring about compatibility between different land uses and to protect the scale and character of existing development from the encroachment of potentially incompatible uses.

1.2.8 Density and Intensity

To regulate the density of residential uses and the intensity of nonresidential uses.

Sec. 1.3. Authority

The County Commission of Elkhart County adopts this Ordinance pursuant to its authority under the laws of the State of Indiana, IC 36-7-4.

Sec. 1.4. Jurisdiction and Legislative Bodies

1.4.1 This Ordinance applies to all land within Elkhart County, Indiana, excluding the legally established planning jurisdictions of the Cities of Goshen, Elkhart and Nappanee.

1.4.2 For the purposes of this Ordinance, the term "appropriate legislative body" means the following legislative bodies within the County.

| Legislative Body | Jurisdiction |
|--|--|
| Bristol Town Council | Town of Bristol |
| Millersburg Town Council | Town of Millersburg |
| Middlebury Town Council | Town of Middlebury |
| Wakarusa Town Council | Town of Wakarusa |
| Elkhart County Board of County Commissioners | All unincorporated areas of Elkhart County |

Sec. 1.5. General Rules of Construction

1.5.1 The following general rules of statutory construction apply when interpreting this Ordinance.

- A. Words in the present tense include the future and vice-versa; words in the singular number include the plural number and vice-versa.
- B. The word "building" includes the word "structure."
- C. The words "must" or "must not" and "may not" are mandatory and the word "may" is permissive.
- D. The word "district" means zoning district.
- E. The word "County" means Elkhart County, Indiana.
- F. The words "petitioner" and "applicant" are synonymous.
- G. If a feminine term is used, the masculine also applies and vice-versa.
- H. The word "and" must be construed to include all connected items in a series or set of conditions or provisions.

Draft E –
Sec. 1.04

Draft E –
Sec. 1.03

Draft E –
Sec. 1.08



Art.1,
Sec. 2

- I. The word "or" must be construed to include one or more of the items in a series or set of conditions or provisions, unless the context clearly indicates otherwise.
- J. The use of terms such as "including," "such as," or similar language are intended to provide examples, not to be exhaustive lists of all possibilities, unless the context clearly indicates otherwise.
- K. Commentaries are sometimes included in this Ordinance as a means of clarifying certain provisions or providing supplemental information thought to be useful for Ordinance users. Text marked as "commentary" has no regulatory effect. It is intended solely as a guide for administrative officials and the public.

Some from Draft E – Sec. 1.07

COMMENTARY: *When commentaries are provided, they will appear in this manner.*

- L. If a regulatory formula is used within this Ordinance and results in a non-whole number of an indivisible object or feature (e.g., a tree), the non-whole number must be rounded up to the next highest whole number.

COMMENTARY: *For example, if a single tree is required to be planted per 40 feet of street frontage, a lot with 90 feet of street frontage would technically result in a requirement of 2.25 trees. According to this rule of construction, the required number of trees would be rounded up to 3.*

- M. All references to other county, state or federal regulations in this Ordinance refer to the most current version and citation for those regulations, unless expressly indicated otherwise. If the referenced regulations have been repealed and not replaced by other regulations, requirements for compliance are no longer in effect.
- N. All references to "days" are deemed working days unless otherwise expressly stated. The time in which an act must be completed is computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday or holiday observed by the County, that day is excluded. A day concludes at the close of business (5:00 p.m. on Mondays and 4:00 p.m. on Tuesdays through Fridays), and any materials received after that time will be deemed to have been received the following day.
- O. Wherever a provision appears requiring the head of a department or another official or employee of the County to perform an act or duty, that provision is construed as authorizing the department head or official to delegate that responsibility to a designee.

Note to Reviewers: *The language in O above prevents the repeating of the phrase "...the Plan Director, or his duly appointed designee, may approve...."*

1.5.2 In construing this Ordinance, all provisions are given equal weight, unless the context clearly demands otherwise.

Sec. 1.6. Minimum Requirements

Draft E –
Sec. 1.07

The provisions of the Zoning Ordinance are the minimum requirements necessary to achieve this Ordinance's purpose.

Sec. 1.7. Conflict or Inconsistency

1.7.1 Internal

Unless otherwise specifically stated within this Ordinance, if two or more provisions of this Ordinance are in conflict or are inconsistent with one another, then the most restrictive provision applies.

1.7.2 Federal, State and Local

A. Whenever a provision of this Ordinance imposes a greater restriction or a higher standard than is required by any State or Federal code or regulation, or other County ordinance or regulation, the provision of this Ordinance applies.

Also it is the intention of this Specification not to in any manner or form conflict with the Subdivision Control Ordinance and that Ordinance jurisdiction over the Platting and recording of real estate.

Specifications
I, Sec. 11

B. Whenever a provision of any State or Federal code or regulation, or other County ordinance or regulation imposes a greater restriction or a higher standard than is required by this Ordinance, the provision of the State or Federal code or regulation, or other County ordinance or regulation applies.

1.7.3 Text, Illustrations and Tables

The text material of this Ordinance controls over illustrative material. If differences are found between the meaning or implication of the text and tables, the stricter of the provisions apply.

Sec. 1.8. Definitions Reference

Draft E –
Sec. 1.07

1.8.1 Article 10 contains the definitions used throughout this Ordinance. Definitions related to Signs are contained in Sec. 7.3.

1.8.2 If words used in this Ordinance are not defined in Article 10, they must be construed to be the common usage of the term. Any legal or technical words not defined in this Ordinance must be construed to be as defined by an appropriate lexicon or current and common dictionary.

Sec. 1.9. Transitional Provisions

Note to Reviewers: These provisions relate to petitions submitted prior to adoption of this Ordinance but that would not be eligible for final decisions until after adoption.

1.9.1 Planned Unit Development

Draft E –
Sec. 1.10

A submitted application for a Planned Unit Development that is deemed sufficient for review prior to [insert effective date] may continue the process to a final decision in accordance to the terms, conditions, and

regulations of the Zoning Ordinance that was in place at the time of filing. However, all administrative procedures and fees must follow those established in this Ordinance.

1.9.2 **Rezoning**

A submitted application for a Rezoning that is deemed sufficient for review prior to [insert effective date] may continue through the process to a final decision in accordance to the terms, conditions and regulations of the Zoning Ordinance that was place at the time of filing. However, all administrative procedures and fees must follow those established in this Ordinance.

1.9.3 **Commitment or Condition for Rezoning**

Any recorded conditions or commitments made applicable to a property as part of a Rezoning and established prior to [insert effective date] remain in full effect and force regardless of allowances provided for in this Ordinance. The owner of a lot with a recorded commitment may petition for the commitment to be removed or modified through the Rezoning process as established in Sec. 3.3.

1.9.4 **Board of Zoning Appeals**

- A. Any Variance, Appeal of Administrative or Hearing Officer Decision, or Special Use Permit petition filed with the Board of Zoning Appeals that is deemed sufficient for review prior to [insert effective date] must continue through the process to a final decision in accordance with the terms, conditions and regulations of the Zoning Ordinance that was in place at the time of filing, provided that the petition is still required by the terms of this Ordinance. However, all administrative procedures and fees must follow those established in this Ordinance.
- B. Any use that was established by a Special Use Permit or a Use Variance granted by the Board of Zoning Appeals prior to [insert effective date] may remain in full effect and force until whichever of the following occurs first:
1. The use is vacated or abandoned for a duration of 12 months;
 2. The lot is voluntarily rezoned to a district that permits the land use;
 3. The lot is reassigned by the County Commission (during the adoption of this Ordinance and Official Zoning Map) to a different zoning district that permits the land use;
 4. The term of the use expires per the terms, conditions or commitments of approval; or
 5. The use becomes non-compliant with its terms, conditions or commitments of approval.

Draft E –
Sec. 1.10

Article 1 General Provisions

Sec. 1.10. Compliance

1.9.5 Condition or Commitment for Special Use Permit or Variance

Any recorded conditions or commitments made applicable to a property as a part of a Special Use Permit or Variance and established prior to [insert effective date] remain in full effect and force regardless of allowances provided for in this Ordinance. The owner of a lot with recorded conditions or commitments may petition for the condition or commitment to be removed or modified through the same Board of Zoning Appeals process during which it was legally applied.

1.9.6 Improvement Location Permit

Any submitted application for an Improvement Location Permit that is deemed sufficient for review prior to [insert effective date] may continue through the chain of review to issuance of a Certificate of Occupancy pursuant to the terms, conditions and regulations of the Zoning Ordinance that was in place at the time of submittal. However, all administrative procedures and fees must follow those established in this Ordinance.

Sec. 1.10. Compliance

Draft E –
Sec. 1.05

No structure may be located, erected, constructed, reconstructed, moved, altered, converted, enlarged or used, and no land use may be established except when in full compliance with all provisions of this Ordinance and when the permits and certificates that this Ordinance requires have lawfully been issued.

Sec. 1.11. Existing Violations Continue

Any violation of the previous Zoning Ordinance that is also a violation of this Ordinance, continues to be a violation and is subject to penalties and enforcement under Article 9. If a use, development, construction activity or other activity is consistent with the provisions of this Ordinance, but not with the previous Zoning Ordinance, then enforcement action must cease, except to the extent of collecting penalties for violations that occurred before [insert effective date].

Sec. 1.12. Severability

Draft E –
Sec. 1.06

If any provision or the application of any provision of this Ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance or the application of such provision to other circumstances is not affected.

Buildings Under Construction

Art.3,
Sec. 6

~~Nothing in this ordinance shall be deemed to require any change in the plans, construction or designated use of any building upon which actual construction was lawfully begun prior to January 18, 1960 and upon which building actual construction has been diligently carried on if that building is completed on or before February 1, 1961.~~

ARTICLE 2 DEVELOPMENT REVIEW BODIES

Note to Reviewers: The purpose of this Article is to list out the review and final action responsibilities of each development review body. Much of this Article is underlined as new text, but the content is the same or similar to existing responsibilities of each development review body.

Administration

Sec. 2.1. General

This Article establishes review authority under this Ordinance. Specific requirements for each type of application or permit are described in Article 3.

Sec. 2.2. Board of County Commissioners

2.2.1 Final Action

- A. The Board of County Commissioners takes final action on the following development review procedures:
 - 1. Zoning Ordinance Text Amendment;
 - 2. Zoning Map Amendment (Rezoning);
 - 3. General Planned Unit Development; and
 - 4. Detailed Planned Unit Development.
- B. An appropriate legislative body, as established in Sec. 1.4, must take final action on the development review applications in items 2 through 4 above if such submitted applications apply to property within the Towns of Wakarusa, Millersburg, Middlebury or Bristol.

Sec. 2.3. Plan Commission

2.3.1 Review and Recommendation

The Plan Commission reviews and makes recommendations on the following development review procedures:

- A. Zoning Ordinance Text Amendment;
- B. Zoning Map Amendment (Rezoning);
- C. General Planned Unit Development; and
- D. Detailed Planned Unit Development.

2.3.2 Rules of Procedure

Note to Reviewers: This is added here to parallel the existing rules of procedure requirement for the BZA.

The Plan Commission must adopt Rules of Procedure concerning matters such as the filing of development review applications, the giving of public notice and the conduct of hearings.

Article 2 Development Review Bodies

Sec. 2.4. Board of Zoning Appeals

Sec. 2.4. Board of Zoning Appeals

2.4.1 Establishment

Note to Reviewers: The word "Advisory" is struck below because it could lead a person to think the board is only "advisory" in nature, rather than having final decision authority.

The County ~~Advisory~~ Board of Zoning Appeals is hereby established in accordance with Indiana Code 36-7-4-900 et seq. ~~For the purpose of this Article, the term "Board" refers to the County Advisory Board of Zoning Appeals.~~

Art.6,
Sec.1

2.4.2 Final Action

The Board of Zoning Appeals takes final action on the following development review procedures:

- A. Special Use Permit except for those related to mobile homes;
- B. Variance or Special Use Permit referred to the Board by the Zoning Administrator, Hearing Officer, petitioner or remonstrator in accordance with Sec. 2.05 of the Board of Zoning Appeals Rules of Procedure; and
- C. Appeal of Administrative or Hearing Officer Decision.

2.4.3 Composition, Jurisdiction and Appointment

Note to Reviewers: Removal of some words in this and other Sections of the Zoning Ordinance draft is in keeping with an attempt at the use of "Plain English" drafting standards. Also, "must" and "shall" are often used interchangeably in ordinances. In an effort to be consistent, "must" is used throughout rather than "shall".

In addition to the Membership, Officer and Staff provisions in the Board of Zoning Appeals Rules of Procedure, the following provisions apply.

~~The County Advisory Board of Zoning Appeals shall consist of five members.~~

~~The County Advisory Board of Zoning Appeals shall have full concurrent jurisdiction of the subject matter provided for in this Code Section, except that power over subject matter exclusively delegated to the Hearing Office by this Article.~~

Art.6,
Sec.2

Art.6,
Sec.2

- A. The members of the County ~~Advisory~~ Board of Zoning Appeals shall must be appointed pursuant to State law and after the primary term, each member ~~shall~~ serves for a four-year term.
- B. Each member shall must reside or own property within the jurisdiction of this Ordinance established in Sec. 1.4. in the geographic area under the jurisdiction of the division of the County Advisory Board of Zoning Appeals to which he is appointed. Each appointment authority described in paragraph C below may, at any time, appoint one or more alternate members who shall must be available to replace any member who becomes disqualified under State law. The terms of

these members shall expire on December 31 of the last year of their designated term.

C. The members of the County Advisory Board of Zoning Appeals shall must be appointed and serve for the following primary terms:

Art.6,
Sec.2

1. The Board of County Commissioners shall must appoint a member of the County Plan Commission who shall to serve a term of one year.
2. The Board of County Commissioners shall must appoint a member who shall to serve a term of two years.
3. The County Plan Commission shall must appoint one member from its own membership who shall to serve a term of three years.
4. The County Council shall must appoint a member who shall to serve a term of four years.
5. The Board of County Commissioners shall must appoint a member who shall to serve a term of four years.

Organization

Note to Reviewers: Election of Chair and Vice-Chair is covered in rules of procedure.

Art.6,
Sec.3

At the first meeting of each year, the Board shall elect a Chairman and a Vice-Chairman from among its members. The Board may appoint and fix the compensation of a Secretary and those employees necessary for the discharge of its duties, all in conformity to and compliance with salaries and compensations fixed by the County Council and State law.

2.4.4 Rules of Procedure and Fees

Note to Reviewers: Fees are addressed in Sec. 3.1.

Art.6,
Sec.4

The Board of Zoning Appeals shall must adopt the Rules of Procedure concerning matters such as the filing of Appeals, applications for Variances and Special Uses development review applications, the giving of public notice and the conduct of hearings. The respective application fee, as established by the Elkhart County Advisory Plan Commission and set forth in its Uniform Schedule of Fees to its Rules of Procedure, shall be paid at the time of the filing.

Meetings and Records

Note to Reviewers: Meetings and Records are covered in rules of procedure.

Art.6,
Sec.5

All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions, prepare written findings of fact and record the vote, disqualification, abstention, or failure to vote of each member upon each question. All minutes and records shall be filed in the office of the Board and shall be a public record.

Article 2 Development Review Bodies

Sec. 2.5. Hearing Officer

Conflict of Interest

Note to Reviewers: Conflicts of Interest are covered in rules of procedure.

No member of the Board shall participate in a hearing or decision of the Board concerning a matter in which he has a direct or indirect financial interest or, which for any other reason brought to the attention of the Board, results in his disqualification, either by himself or by the Board. The Board shall enter in its records the fact that a regular member has such a disqualification and the name of the alternate member, if any, who participates in the hearing or decision. That alternate member, if any, shall be appointed by the same body which appointed the regular member who has been disqualified.

2.4.5 Outside Communication

No person shall ~~may~~ communicate with any Board member prior to a hearing or decision with the intent to influence the actions of any member of the Board of Zoning Appeals regarding any matter pending before the Board of Zoning Appeals. However, the Staff may file a written statement with the Board of Zoning Appeals setting forth findings of facts or its opinions recommendations concerning that matter.

2.4.6 Review by Certiorari

Every decision by the Board of Zoning Appeals shall be is subject to review by certiorari.

Sec. 2.5. Hearing Officer

2.5.1 Establishment

The Plan Commission shall, ~~after April 1, 1984,~~ must appoint a Hearing Officer in accordance with the provisions in Indiana Code 36-7-4-923 and 924.

2.5.2 Final Action

The Hearing Officer takes final action on the following development review procedures: ~~shall have the following powers and duties:~~

A. Special Use Permit for mobile home; and

~~The exclusive right to hear and approve or deny all Specification J one (1) family and two (2) family mobile, compact or expandable homes, special uses only.~~

B. Variance.

~~The exclusive right to hear and approve or deny variances from the development standards of the Zoning Ordinance.~~

2.5.3 Rules of Procedure

The rules of procedure adopted by the Board of Zoning Appeals under Sec. 2.4 of this Article in their entirety shall apply to the Hearing Officer.



Sec. 2.6. Technical Review Committee

2.6.1 Establishment

A Technical Review Committee is established to act as a coordinated and centralized technical review body. The Technical Review Committee is composed of persons from various County departments that have an interest in development review.

2.6.2 Determination of Technical Correctness or Incorrectness

The Technical Review Committee determines technical correctness or incorrectness, as described in subsection 3.1.4E, for the following development review procedures:

- A. General Planned Unit Development; and
- B. Detailed Planned Unit Development.

2.6.3 Membership

A. Chair

The Plan Director serves as Chair of the Technical Review Committee and is responsible for all final actions of the Committee.

B. Other Members

In addition to the Chair, the Technical Review Committee is composed of the following members:

- 1. Health Officer;
- 2. County Surveyor;
- 3. Soil and Water Conservation District Program Manager;
- 4. County Engineer; and
- 5. Other County staff members or representatives of external agencies, such as staff members of Towns within the jurisdiction of this Ordinance or of public utilities, as the Chair deems necessary for the review of an application.



Sec. 2.7. Plan Director

The Plan Director reviews and makes recommendations on the following development review procedures:

- 2.7.1 Zoning Ordinance Text Amendment;
- 2.7.2 Zoning Map Amendment (Rezoning);
- 2.7.3 General Planned Unit Development; and
- 2.7.4 Detailed Planned Unit Development.



Sec. 2.8. Zoning Administrator

Note to Reviewers: BZA Rules of Procedure cover appointment of the Zoning

Article 2 Development Review Bodies

Sec. 2.8. Zoning Administrator

Administrator.

The Board of County Commissioners shall appoint the Zoning Administrator who shall be a member of the Plan Commission staff.

Art.5,
Sec.1

The term of the Zoning Administrator shall expire on December 31 of the year appointed. Each appointment shall be made for one year, with the term commencing on January 1. The Zoning Administrator is hereby designated and authorized to enforce this Ordinance under the rules promulgated by the County Plan Commission.

The Zoning Administrator may designate, upon approval of the Plan Commission, certain persons who shall have full power to act for and on his or her behalf. The Zoning Administration shall be deemed a part of the Planning Department.



2.8.1 Powers and Duties

A. Review and Recommendation

The Zoning Administrator reviews and makes a recommendation on the following development review procedures:

1. Special Use Permit;
2. Variance;
3. Building Permit;
4. Sign Permit; and
5. Certificate of Occupancy.

Note to Reviewers: If Zoning Administrator has review authority over C of Os this will mean Planning staff will conduct site visits prior to issuance a C of O to ensure compliance with the ILP and/or DPUD drawings.

B. Final Action

The Zoning Administrator takes final action on the following development review procedures:

1. Administrative Adjustment;
2. Written Interpretation;
3. Improvement Location Permit; and
4. Temporary Use Permit.

Art.5,
Sec.1

Issue all Improvement Location Permits and keep permanent records of them; and

Certify the County Certificates of Occupancy to the requirements of this ordinance, and keep permanent records of them.

Note to Reviewers: In actual practice, the Building Commissioner approves C of Os.

Other Duties

Note to Reviewers: *These are legitimate duties but I do not think they need to be codified in an Ordinance.*

Conduct inspections of buildings, structures, and uses of land to determine compliance with the terms of this ordinance;

Maintain permanent and current records of this ordinance, including all maps, amendments, special uses and variations; and

Provide and maintain a public information bureau to provide information concerning all matters arising out of this ordinance.

C. Administration of the Flood Insurance Program

Specifications L,
Sec.3

The Zoning Administrator ~~is to~~ must act as the Floodplain Administrator and review all development and subdivision proposals to insure compliance with the intent of the flood insurance program and the County Flood Plain Regulations. ~~shall include, but not be limited to the following duties:~~

~~Ensure that all development activities within the Special Flood Hazard Areas of the jurisdiction meet the requirements of this Ordinance.~~

~~Provide information and assistance to citizens upon request about permit procedures and floodplain construction techniques.~~

~~Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Sec. 7.4.2 of this Ordinance, and maintain a record of such authorization (either copy of actual permit or letter of recommendation).~~

~~Maintain a record of the surveyor's or engineer's certificate of the "as built" elevation of the lowest floor (including the basement) of all new and/or substantially improved buildings and the "as built" flood proofed elevation of all buildings subject to Sec. 7.4.3 of this Specification constructed in the Special Flood Hazard Area. The surveyor's or engineer certificate is the responsibility of the homeowner to secure.~~

~~Cooperate with state and federal floodplain management agencies to improve base flood and floodway data and to improve the administration of this ordinance. Submit reports as required for the National Flood Insurance Program.~~

~~Maintain for public inspection and furnish upon request information on regulatory flood data, Special Flood Hazard Area maps, copies of Indiana Department of Natural Resources permits and letters of recommendation, federal permit documents and "as built" elevation and flood proofing data for all buildings constructed subject to this ordinance.~~

~~Notify adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notification to FEMA.~~

Sec. 2.9. Building Commissioner

2.9.1 Review and Recommendation

The Building Commissioner reviews and makes recommendations on Temporary Use Permit applications.



2.9.2 Final Action

The Building Commissioner takes final action on the following development review procedures:

- A. Building Permit;
- B. Sign Permit; and
- C. Certificate of Occupancy.



Sec. 2.10. Summary of Review Authority

The following table summarizes the powers and duties established in this Article.

Article 2 Development Review Bodies
 Sec. 2.10. Summary of Review Authority

| Procedure | Building Commissioner | Zoning Administrator | Plan Director | Technical Review Committee | Hearing Officer | Board of Zoning Appeals | Plan Commission | Brd. of County Comm. or Other Legislative Body | Reference |
|---|-----------------------|----------------------|---------------|----------------------------|-----------------|-------------------------|-----------------|--|-----------|
| Building Commissioner | | | | | | | | | |
| Building Permit | D | R | | | | | | | Sec. 3.12 |
| Sign Permit | D | R | | | | | | | Sec. 3.13 |
| Certificate of Occupancy | D | R | | | | | | | Sec. 3.14 |
| Zoning Administrator Action | | | | | | | | | |
| Administrative Adjustment | | D | | | | | | | Sec. 3.8 |
| Written Interpretation | | D | | | | | | | Sec. 3.9 |
| Improvement Location Permit | | D | | | | | | | Sec. 3.10 |
| Temporary Use Permit | R | D | | | | | | | Sec. 3.11 |
| Hearing Officer Action | | | | | | | | | |
| Special Use Permit (Mobile Home) | | R | | | <D> | | | | Sec. 3.6 |
| Variance | | R | | | <D> | | | | Sec. 3.7 |
| Board of Zoning Appeals Action | | | | | | | | | |
| Special Use Permit (Mobile Home) | | R | | | | <D>* | | | Sec. 3.6 |
| Special Use Permit (Non-Mobile Home) | | R | | | | <D> | | | Sec. 3.6 |
| Variance | | R | | | | <D>* | | | Sec. 3.7 |
| Appeal of Administrative or Hearing Officer Decision | | | | | | <D> | | | Sec. 3.15 |
| Board of County Commissioners or Other Legislative Body Action | | | | | | | | | |
| Zoning Ordinance Text Amendment; | | | R | | | | <R> | <D> | Sec. 3.2 |
| Zoning Map Amendment (Rezoning) | | | R | | | | <R> | <D> | Sec. 3.3 |
| General Planned Unit Development | | | R | C | | | <R> | <D> | Sec. 3.4 |
| Detailed Planned Unit Development | | | R | C | | | <R> | <D> | Sec. 3.5 |

R = Review and Recommendation

D = Decision

C = Determination of technical correctness or incorrectness

< > = Public Hearing Required

* Referred to the BZA by the Zoning Administrator, Hearing Officer, petitioner or remonstrator in accordance with Sec. 2.05 of the Board of Zoning Appeals Rules of Procedure

Article 2 Development Review Bodies

Sec. 2.10. Summary of Review Authority

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ARTICLE 3 DEVELOPMENT REVIEW PROCEDURES

Sec. 3.1. Common Review Procedures

Note to Reviewers: These Common Review Procedures establish provisions that apply to several of all development review procedures detailed in this Article. This avoids repetition in the rest of the Article.

3.1.1 Conformity with Development Regulations

Note to Reviewers: This provision nullifies erroneously issued permits or approvals.

Every development review body vested with the authority to issue a development approval under this Ordinance may not issue an approval for any use, structure or improvement that conflicts with any provision of this Ordinance. Any development approval issued in conflict with the provisions of this Ordinance or in error is null and void.

3.1.2 Decision Categories

The following table establishes the decision category for each development review procedure.

| Decision Category | Development Review Procedures |
|--|--|
| Legislative | |
| Legislative decisions are those which establish or change regulations governing the use or development of land. Legislative decisions may be based upon general considerations of fostering and preserving the public health, safety and general welfare, including the County's fiscal well being, and are characterized by exercise of broad discretion. | Zoning Ordinance Text Amendment |
| | Zoning Map Amendment (Rezoning) |
| | General Planned Unit Development |
| | Detailed Planned Unit Development |
| Quasi-Judicial | |
| Quasi-judicial decisions are those in which policies and regulations contained in the Comprehensive Plan and this Ordinance are applied to specific development applications. Quasi-judicial decisions require the exercise of considerable discretion and may involve fact-finding or the imposition of conditions or commitments. | Special Use Permit |
| | Variance |
| | Appeal of Administrative or Hearing Officer Decision |
| | PUD Development Plan |
| Administrative | |
| Administrative decisions are those in which regulations contained in this Ordinance are applied to specific development applications. Administrative decisions may require the exercise of very limited discretion. | Administrative Adjustment |
| | Written Interpretation |
| | Improvement Location Permit |
| | Temporary Use Permit |
| | Building Permit |
| | Sign Permit |
| Certificate of Occupancy | |



3.1.3 Sequence of Development Approval

Note to Reviewers: This provision requires that legislative decisions, such as rezoning, occur prior to quasi-judicial or administrative decisions. This prevents staff and other review bodies from wasting time reviewing proposals that are out of sequence.

Where more than one development application is required by this Ordinance in order to initiate, continue or complete development of land, final actions must be taken in the following general sequence.

- A. Final action must be taken on applications categorized as legislative prior to final action on all other applications.
- B. Final action must be taken on applications categorized as quasi-judicial prior to final actions on applications classified as administrative.
- C. Applications within the same category that are assigned priority under this Article must be decided prior to subordinate applications.

Example: Although Building Permits and Certificates of Occupancy are both Administrative Decisions, Sec. 3.12 of this Article requires that a Building Permit be approved before a Certificate of Occupancy can be approved.

3.1.4 Application Requirements

A. Application Initiation

- 1. Development applications may be initiated according to the following table.

| Procedure | Property Owner or Land Contract Purchaser | Plan Director | Plan Commission | Legislative Body |
|---|---|---------------|-----------------|------------------|
| Zoning Ordinance Text Amendment | | ✓ | ✓ | ✓ |
| Zoning Map Amendment (Rezoning) | ✓ | ✓ | ✓ | ✓ |
| All other review procedures described in this Article | ✓ | | | |

✓ = Entity may initiate application

- 2. A legislative body may only initiate a Zoning Map Amendment for property within its own jurisdiction.
- 3. An application for a Zoning Map Amendment or General or Detailed Planned Unit Development ~~By application (petition) from~~ must contain the signatures of the property owners of at least fifty percent of the land involved in the request.

Specifications I, Sec. 3

B. Forms

- 1. Development applications required under this Ordinance must be submitted on forms and in such numbers as required by the Rules

of Procedure of the Plan Commission or Board of Zoning Appeals, as appropriate.

Significant change since Tech Committee review

2. Discovery that differing or conflicting versions of a development review application have been submitted to various development review bodies or members of the Technical Review Committee will result in termination of review for that application until the applicant corrects the discrepancies.

C. **Fees**

Art.7, Sec.1

All development review applications for amendments, except those originated by the County Plan Commission, ~~shall~~ must be accompanied by the fee in accordance with Uniform Schedule of Fees established by the Elkhart County Advisory Plan Commission in its Rules of Procedure.

D. **Application Sufficiency Review**

Note to Reviewers: *This sufficiency review is already happening and ensures that the members of the Technical Review Committee are not wasting their time attempting to review applications that do not contain the needed materials. **The subdivision control ordinance should be amended to include identical language to cover plat submittals.***

1. A determination of whether a development review application is sufficient or not for formal review must be made by the Plan Director, for those development review procedures listed in Sec. 2.6.2, within two days of the application submittal.
2. An application that contains all of the information required by the Rules of Procedure of the Plan Commission or Board of Zoning Appeals, as appropriate, must be deemed sufficient for formal review.
3. If the application is determined to be insufficient for formal review, the Plan Director must notify the applicant in writing. The notification must list all missing items. The applicant must submit the required materials within 48 hours of the submittal deadline in order to be placed on the Technical Review Committee agenda. If the required materials are not submitted within the 48-hour period, the application is deemed rejected and not accepted for submittal.
4. A determination of sufficiency does not imply any determination that the application successfully meets any review criteria nor does it imply any positive or negative final action.

E. **Technical Correctness Review**

Note to Reviewers: *This technical correctness review is already happening and ensures that the members of the Plan Commission are not wasting their time attempting to review applications that do not meet the basic requirements of this or other development-related County ordinances. **The subdivision control***

Article 3 Development Review Procedures

Sec. 3.1. Common Review Procedures

ordinance should be amended to include identical language to cover plat submittals.

1. A determination of whether a development review application is technically correct or not must be made by the Chair of the Technical Review Committee, for those development review procedures listed in Sec. 2.6.2, within 10 days of the application submittal deadline.

Note to Reviewers: Tech Committee meeting is held, at most, 9 days after submittal deadline. This language refers to Sec. 2.6.2, which gives the Technical Review Committee correctness review responsibility over GPUDs, DPUDs, and Industrial CUDs.

2. Every member of the Technical Review Committee must deem an application correct, according to the ordinances each member administers, before the applicant may be deemed correct by the Chair of the Committee.
3. An application that shows compliance with the standards in this Ordinance, and other development-related ordinances administered by the members of the Technical Review Committee, must be deemed correct.
4. If an application is determined to be incorrect, the Plan Director must notify the applicant in writing with a list of application deficiencies and required corrections. If the Chair of the Technical Review Committee determines that the applicant has not submitted adequate required application corrections within five days of notification, the applicant may submit corrections before the next application submittal deadline for additional review at the next Technical Review Committee meeting.

Note to Reviewers: 4 above describes the Tech Corrections meeting process. If the applicant is unable to supply corrections required at the Tech Corrections meeting, then the application must be reviewed again at the next Tech Committee Meeting.

5. After a determination of correctness, the Chair of the Technical Review Committee must forward the application to the Plan Commission with a recommendation.

3.1.5 **Public Notice and Public Hearing Requirements**

The Plan Director must provide public notice and the Board of Zoning Appeals and Plan Commission must conduct public hearings in accordance with the Rules of Procedure for such review bodies for those development review applications established in this Article that require public notice and public hearings.

Note to Reviewers: In other codes I've done, more attention is paid to establishing public notice and public hearing procedures, but those are currently contained in the Rules of Procedure for BZA and PC and seem to be working fine as is.

3.1.6 **Unanimous Vote Required**

If the Plan Commission ~~does not approve the enactment of any proposed amendment~~ recommends denial of a development review application for which it has review and recommendation authority, then it shall become effective only by a unanimous vote of the Board of County Commissioners is required for approval.

3.1.7 **Approvals with Modifications**

If a legislative body approves a development review application with conditions or modifications required, then the applicant must submit the corrected application addressing any required conditions or modifications to the Plan Director.

Note to Reviewers: For example if the Board of County Commissioners approves a DPUD with a required change to the DPUD site plan, then a modified plan must be submitted to the Director for the file.

3.1.8 **Revocation of Permit or Approval**

Note to Reviewers: Allows for permit revocation if statements on the application or drawing are false or misleading or if a project is not built according to approved plans. **County staff has reported that projects not being built to approved plans is a recurring problem.**

A. **Misrepresentation of Application**

A development review body may revoke a permit or approval, issued under the provisions of this Ordinance, when there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

B. **Violation of Ordinance Provisions or Approved Plans**

A development review body may revoke a permit or approval upon determination by the body that the development project for which the permit or approval was issued is in violation of, or not in conformity with, any of the following:

1. The provisions of this Ordinance;
2. An approved Planned Unit Development Detailed Site Plan, Detailed Development Plan, or Ordinance;
3. An approved Special Use Permit or Variance;
4. An approved Improvement Location, Building or Sign Permit; or
5. Commitments or conditions related to the subject property.

C. **Enforcement**

Uncorrected projects that are not built to an approved ordinance, plan, permit, permit, commitment or condition are subject to the enforcement provisions in Article 9.

Art.7,
Sec.1

Significant
change since
Tech
Committee
review

Article 3 Development Review Procedures

Sec. 3.1. Common Review Procedures

3.1.9 Previously Denied Applications

The Zoning Administrator must not accept an application for a Zoning Map Amendment, General or Detailed Planned Unit Development, Special Use Permit or Variance that has been denied within the last 12 months. However, the Zoning Administrator may request that the Plan Commission, Board of Zoning Appeals or Hearing Officer redocket an application containing major changes that may justify refileing within the 12-month period. The Plan Commission, Board of Zoning Appeals or Hearing Officer may allow the revised application to be placed on the agenda of a subsequent public hearing.

Draft E –
Sec.
7.11.B

3.1.10 Modification of Approved Site Plan

A. The Plan Director may allow minor modifications to an approved site plan, for those development review applications that require review of a site plan, if the modifications meet the criteria below.

Note to Reviewers: *This applies to DPUDs, Variances and Special Use Permits. Stricken language below only applied to DPUDs.*

1. Additions to structures must not exceed 10 percent of the previously approved total gross floor area of the project provided that overall density of the project does not increase.
2. Shifts in structure position must not vary more than 10 feet from the previously approved position and must not encroach into any required setback.
3. Additional height of a structure must not exceed 10 percent of the previously approved height.

Question for Policy Committee: *Other criteria? Shifts in structure related to percentage of lot width or depth?*

- B. For all other requested modifications, the Plan Director may either:
1. Present the request as a staff item, which does not require public notice or a public hearing, for consideration as a minor modification before the Plan Commission or Board of Zoning Appeals, as appropriate; or
 2. Require that the request be processed as a major modification with submittal of a new application to be reviewed in accordance with the procedures established in this Article.

~~Major or Minor changes to the Detailed Planned Unit Development~~

~~No changes be made in the approved Detailed Planned Unit Development during construction of the Planned Unit Development except as follows:~~

~~Minor changes in the location, bulk, area, and height of buildings and other site improvements may be authorized by the Staff.~~

~~The Staff may refer minor change requests to the Plan Commission with information on the request.~~



Specific
ations I,
Sec. 13

Major changes will require an amendment to the Detailed Planned Unit Development Ordinance.

3.1.11 Development of a Planned Unit Development Without Site Plan

Question for Policy Committee: *Exempt single-family dwelling from having to do this?*



If a property owner requests to erect, reconstruct, alter, move, convert, extend or enlarge a structure or improvement on a property that has an approved Planned Unit Development applied to it on the Zoning Map, but that has no approved General Development Plan, Detailed Development Plan or Detailed Site Plan, then the owner must either:

- A. Submit a Zoning Map Amendment application for a base zoning district in accordance with Sec. 3.3 to have the Planned Unit Development designation removed from the property; or
- B. Submit a General or Detailed Planned Unit Development application in accordance with Sec. 3.4 or Sec. 3.5.

3.1.12 Commitments

Note to Reviewers: *Modified to allow the BZA or BCC to impose commitments, as allowed by State law.*

Art.6,
Sec.9

- A. A legislative body or the Board of Zoning Appeals 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 order to receive final approval. ~~a Special Use or a Variance from the terms of the Zoning Ordinance.~~ The owner must record those commitments shall be recorded in the office of the County Recorder and shall the commitment must take effect upon the granting of the final approval. ~~Special Use or Variance.~~ A recorded commitment shall be is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.
- B. A commitment may be modified or terminated only by a decision of the legislative body or the Board of Zoning Appeals made at a public hearing after notice as provided by ~~rule~~ the applicable body's Rules of Procedure.

3.1.13 Appeals

A. Administrative and Hearing Officer Decisions

- 1. Except for a decision of the Building Commissioner, any party aggrieved by a decision of an administrative official or the Hearing Officer regarding the provisions of this Ordinance may appeal to the Board of Zoning Appeals in accordance with Sec. 3.15.
- 2. Any party aggrieved by a decision of the Building Commissioner regarding the provisions of this Ordinance may appeal to the Fire Prevention and Building Safety Commission.

Article 3 Development Review Procedures

Sec. 3.1. Common Review Procedures

B. Quasi-Judicial and Legislative Decisions

Any party aggrieved by a decision of the Board of Zoning Appeals, Plan Commission or Board of County Commissioners may appeal to a court of competent jurisdiction.

Sec. 3.2. Zoning Ordinance Text Amendment

Amendments



3.2.1 Applicability

- A. The Board of County Commissioners may amend the text of this Zoning Ordinance from time to time in order to:
- Establish and maintain sound, stable and desirable development within the jurisdiction of this Ordinance;
 - Correct errors in the text; or
 - Adjust the text of this Ordinance to changing conditions in a particular area or in the County generally.
- B. All Zoning Ordinance Text Amendments to this Ordinance shall be in conformance with Indiana Code 36-7-4-500 et seq. and Indiana Code 36-7-4-600 et seq.

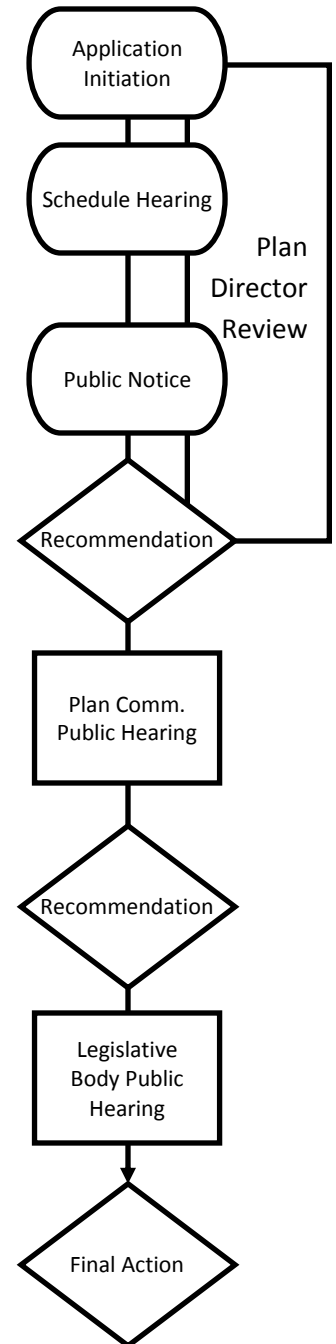
Art.7,
Sec.1

3.2.2 Review Process

Note to Reviewers: *The existing procedures read well, but are being replaced with new wording that accomplishes the same purpose, but that reads consistently with the wording for review processes associated with other applications. Provisions related to unanimous vote required by County Commission if Plan Commission recommends denial are located in Sec. 3.1. above.*

Any proposed amendment shall be submitted to the Plan Commission for report and recommendation prior to any action on it by the Board of County Commissioners.

- A. **Plan Director Review**
The Plan Director must review the submitted application and make a recommendation to the Plan Commission.
- B. **Plan Commission Review**
Following notice in accordance with the Plan Commission Rules of Procedure, the Plan Commission must hold a public hearing and make a recommendation to the Board of County Commissioners.
- C. **Board of County Commissioners Final Action**
Following notice in accordance with the Plan Commission Rules of Procedure, the Board of County Commissioners must hold a public hearing and approve, approve with modifications or deny the Zoning Ordinance Text Amendment.



D. Town Board Final Action

1. After it has approved a Zoning Ordinance Text Amendment related to flood hazard control that specifically and directly impacts an incorporated town within the jurisdiction of this Ordinance, the Board of County Commissioners must forward the Amendment to the appropriate legislative body.
2. The appropriate legislative body must hold a public hearing and approve, approve with modifications or deny the Amendment.
3. The Board of County Commissioners may only forward such Amendment to the appropriate legislative body if it takes a positive final action on the Amendment.
4. The Amendment may only be finally approved if the appropriate legislative body approves or approves with modifications the Amendment.

Significant
change since
Tech
Committee
review

3.2.3 Review Criteria

In determining whether to approve, approve with modifications or deny a proposed Zoning Ordinance Text Amendment, the applicable review bodies must pay reasonable regard to the following criteria.

- A. The amendment promotes the purpose of this Ordinance as established in Sec. 1.2.
- B. The amendment is consistent with the Comprehensive Plan.

Sec. 3.3. Zoning Map Amendment (Rezoning)



3.3.1 Applicability

- A. For the purpose of establishing and maintaining sound, stable and desirable development within the County, the Zoning Map may be amended to:
 - 1. Rezone an area; or
 - 2. Extend the boundary of an existing zoning district.
- B. All Zoning Map Amendments to this Ordinance shall be in conformance must conform with Indiana Code 36-7-4-500 et seq. and Indiana Code 36-7-4-600 et seq.

3.3.2 Review Process

A. Plan Director Review

The Plan Director must review the submitted application and make a recommendation to the Plan Commission.

B. Plan Commission Review

Following notice in accordance with the Plan Commission Rules of Procedure, the Plan Commission must hold a public hearing and make a recommendation to the appropriate legislative body.

C. Legislative Body Final Action

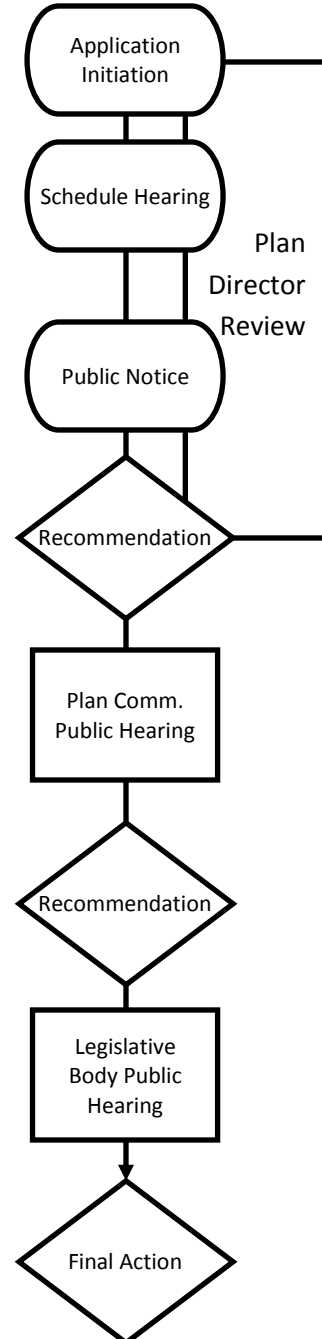
Following notice in accordance with the Plan Commission Rules of Procedure, the appropriate legislative body must hold a public hearing and approve, approve with commitments or deny the Zoning Map Amendment.

3.3.3 Review Criteria

In determining whether to approve, approve with commitments or deny a Zoning Map Amendment, the applicable review bodies must pay reasonable regard to the following criteria:

Note to Reviewers: *A through E below are state mandated criteria for rezoning and the staff already uses them when producing a staff recommendation. The other criteria are recommended in the Comprehensive Plan.*

- A. Compliance of the requested Zoning Map Amendment with the Comprehensive Plan;
- B. Current conditions and the character of current structures and uses in the subject property and its surroundings;
- C. The most desirable use of the subject property;



Article 3 Development Review Procedures

Sec. 3.3. Zoning Map Amendment (Rezoning)



D. The degree to which the proposed Zoning Map Amendment conserves property values;

E. The degree to which the proposed Zoning Map Amendment promotes responsible growth and development;



F. Proximity of the subject property to vacant or underutilized properties already designated with the requested zoning district;

G. Proximity to the Urban Growth Area of incorporated Towns; and



H. Proximity to other public facilities such as schools, libraries, fire stations and parks.

Sec. 3.4. General Planned Unit Development



3.4.1 Applicability

- A. A Planned Unit Development may be used to permit new or innovative concepts in land utilization, master-planned communities or mixed use developments that other zoning districts do not easily accommodate. A Planned Unit Development also provides site-specific compatibility and design standards. While greater flexibility is given to allow special conditions or restrictions that would not otherwise allow the development to occur, procedures are established to ensure against misuse of increased flexibility.

Requirements

- B. ~~The Elkhart County Plan Commission and Board of County Commissioners shall~~ may consider proposals for Planned Unit Development as a:
1. General Planned Unit Development; or
 2. Detailed Planned Unit Development.
- C. ~~An approved~~ The General Planned Unit Development application procedures will allow a petitioner to receive a change to the ~~zone maps~~ Zoning Map without a Detailed Site Plan or Detailed Development Plan, as required for a Detailed Planned Unit Development.
- D. Except as allowed by the extension provisions in Sec. 3.4.3, within two years of approval, all adopted General Planned Unit Developments Ordinances must be followed by an adopted and recorded Detailed Planned Unit Development Ordinance prior to the issuance of any Improvement Locations Permit and or Building Permits. The Detailed Planned Unit Development may be for all or a portion of the property covered by the General Planned Unit Development.

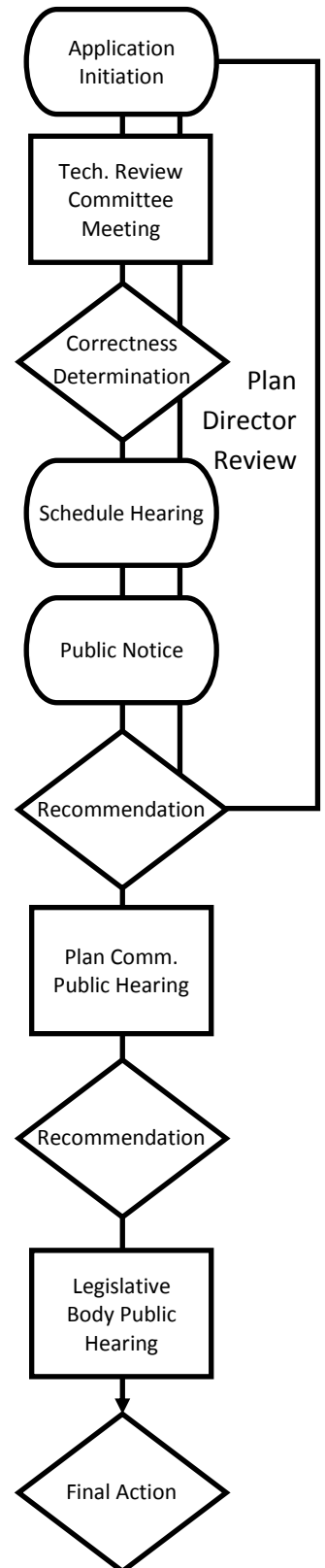
Specifications I, Sec. 4

~~This Ordinance shall provide for compliance with Specifications I by requiring All General Planned Unit Developments to be superseded within two years by a Detailed Planned Unit Development.~~

~~The consideration, of all applications, shall be based on the criteria established by this Specification at the time of application filing and consideration.~~

3.4.2 Review Process and Criteria

- A. Except as modified below, the Plan Commission and



Article 3 Development Review Procedures

Sec. 3.4. General Planned Unit Development

appropriate legislative body must review and take final action on a General Planned Unit Development application, including the associated General Development Plan, following the review process and review criteria established for a Zoning Map Amendment set forth in Sec. 3.3.

- B.** In addition to the Zoning Map Amendment review process set forth in Sec. 3.3, prior to review and recommendation by the Plan Commission, the Technical Review Committee must deem the General Planned Unit Development submittal a correct application. The process for determination of correctness is described in subsection 3.1.4E.

~~General Planned Unit Development Application~~

Specifications I, Sec. 3

~~When a properly filed application has been received by the staff the application will be reviewed by the following:~~

~~Division of Planning~~

~~Division of Health~~

~~Division of **Engineering**~~

~~Division of Code Enforcement~~

~~County Surveyor~~

~~The review will consist as follows:~~

~~For non-compliance with Specifications I.~~

~~Suggestions to meet the purposes and criteria established by Specifications I.~~

~~The review and comments will be forwarded to the Elkhart County Plan Commission and placed in the file.~~

~~Site Plan Review Committee Review of GPUD~~

~~All petition filed as a General Planned Unit Development can request that the review and recommendation be processed by the Site Plan Review Committee~~

~~Submittal Requirements~~

Specifications I, Sec. 6

Note to Reviewers: *Submittal requirements do not have to be set out in an ordinance.*

~~General Planned Unit Developments~~

Procedures For Application:

1. ~~Submittal Requirements:~~

Specifications
I, Sec. 6

~~Applicant shall submit the following~~

~~Application forms adopted by the Plan Commission; The respective application fee, as established by the Elkhart County Advisory Plan Commission and set forth in its Uniform Schedule of Fees in its Rules of Procedure, shall be paid at the time of the filing of the application.~~

~~Legal Description for parcel;~~

~~Narrative of Request describing the following:~~

~~Intention for ownership;~~

~~The approximate locations of the proposed land uses and the approximate percentage of site for each use;~~

~~Intentions regarding water and sewage disposal;~~

~~How development is relates with surrounding land uses; and~~

~~Other information necessary to determine compliance with this Ordinance.~~

~~reports: The following reports must be prepared by a qualified person and shall contain the requested information in its entirety:~~

~~Soil Report (if on site septic systems are to be considered): This report must be written by a person(s) determined by the Health Department to be proficient in the identification of soils and their properties. (Since all permits for septic systems will require some form of on site soil investigation, the format of the reports should comply with the standards established by the Elkhart County Health Department for residential and commercial septic systems).~~

~~The Soil Reports must have the following information:~~

~~Soil Boring / Soil Pit location Site plan.~~

~~Soil Profile Logs for all borings or pits.~~

~~Depth to All Limiting Layers (e.g. Water Tables, Loading Rates Greater than 0.75 gallons per day per square foot or Less than 0.25 gallons per day per square foot,)~~

~~Municipal Sewer and Water Report: This report must have the following information:~~

~~Distance to nearest public water or sewer utility.~~

Article 3 Development Review Procedures

Sec. 3.4. General Planned Unit Development

If development is to be on private well and septic reason for not extending and connection. (e.g. not in service area of utility)

Specifications

I, Sec. 6

~~Development Plan Requirements All General Development Plans will be on not less than eleven by seventeen inches sheets. Ten copies must be submitted along with the application. with all of the following items must be addressed or shown on the Development Plan:~~

~~Name of Planned Unit Development with location description to the Quarter Quarter Section, Township, Range, and Political Township. The name of Planned Unit Developments must be unique and not similar in nature to other recorded Planned Unit Developments or Subdivisions;~~

~~Legal description;~~

~~Drawn to Scale used;~~

~~Date of Drawing;~~

~~North Arrow;~~

~~Boundary of Planned Unit Development shown by a heavy line unique to drawing;~~

~~Locations of all existing easements and rights of way;~~

~~All easements and rights of way to be dedicated for public use;~~

~~All bearings, lengths, widths and instrument numbers (for all previously recorded documents);~~

~~All corporate boundaries, townships, county and section lines and previously platted tracts adjacent to the Planned Unit Development;~~

~~Approximate Location of the Special Flood Hazard Area (One hundred year flood zone) by a unique line;~~

~~A general location map showing the Planned Unit Development;~~

~~Adjacent parcels boundaries lines shown in hatched lines;~~

~~A certification by owner(s) of property agreeing to the Planned Unit Development and the Development Plan;~~

~~Certifications of compliance with this Ordinance to be signed by the Chairman and the Secretary of the Plan Commission;~~

~~Certifications of Adoptions and Compliance with this Ordinance by the legislative body with jurisdiction over the real estate within the Planned Unit Development;~~

~~Planned Unit Development ordinance number;~~

~~Soils as identified in the Soil Report;~~

~~Identifications of all proposed land uses; and~~

~~Approximate location of all residential and commercial driveways adjacent to and within 200 feet.~~

~~when a Detailed Planned Unit Development consists of a portion of the original General Planned Unit Development, the application must include its relationship to all real estate adopted by the General Planned Unit Development. Exceptions will be for GPUD's initiated by the Legislative Body.~~

3.4.3 Duration

Time Limits and Limitations of General Planned Unit Developments

A. General

~~All real estates properties zoned General Planned Unit Development must have an application for a Detailed Planned Unit Development filed within two years of the ordinance adoptions by the legislative body approval of the General Planned Unit Development. Should If an application for a Detailed Planned Unit Development is approved be for a portion of a General Planned Unit Development, then the two-year time limit will for the remainder of the property must be extended from the adoption date of the Detailed Planned Unit Development Ordinance. If no application has been received or an extension granted, the appropriate legislative body may direct the Plan Commission to initiate a Zoning Map Amendment petition.~~

B. Exceptions

~~All General Planned Unit Developments when initiated by the appropriate legislative body will be for indefinite period of time do not expire.~~

C. Extensions

- ~~1. Any General Planned Unit Development will may be considered for an extension of the time limit and may be approved if no significant changes have occurred to warrant a new public hearing.~~
- ~~2. All extensions requests must in writing stating reasons why the Detailed Planned Unit Developments could not be filed within the two-years time limit.~~

~~All real estate zoned GPUD will be subject to the limitations and restrictions established by this ordinance for non-conforming uses.~~

~~All real estate zoned General Planned Unit Development may have a portion of the real estate subject to an application for a Detailed Planned Unit Development map amendment.~~

Specifications
I, Sec. 12

Sec. 3.5. Detailed Planned Unit Development



3.5.1 Applicability

- A. The Detailed Planned Unit Development review procedure provides the Plan Commission and the appropriate legislative body with the opportunity to review and take final action on a Planned Unit Development application, including its associated Detailed Site Plan and Detailed Development Plan.
- B. In addition, see Sec. 3.4.1.

Planned Unit Development Districts:

The Elkhart County Plan Commission shall consider proposals for Planned Unit Development as a:

Detailed Planned Unit Development; or

General Planned Unit Development.

Planned Unit Development Designations

The designation will be made on the Zoning Maps of Elkhart County, the Incorporated towns of Wakarusa, Bristol, Middlebury and Millersburg by the following

DPUD – Detailed Planned Unit Development.

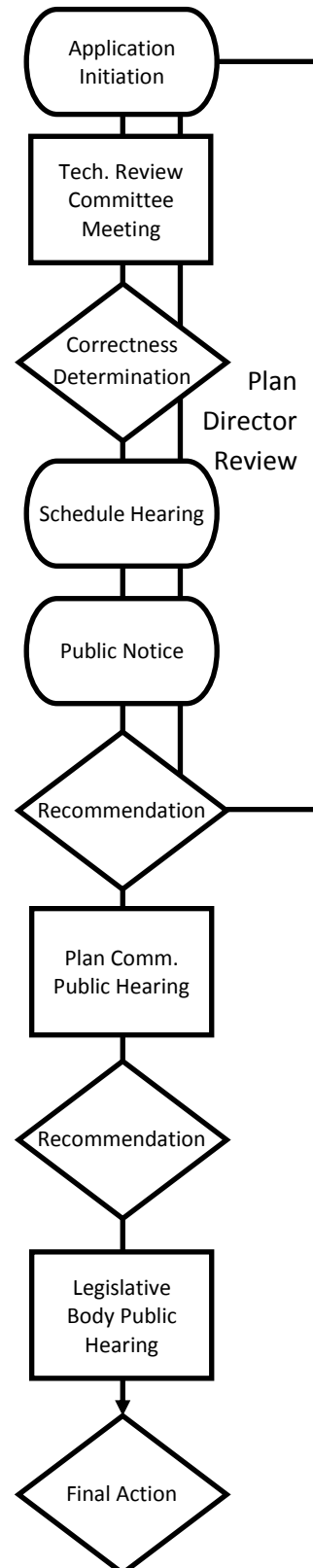
GPUD – General Planned Unit Development.

In addition to the GPUD and DPUD designation the underlying zoning district will be added as a suffix with a hyphen.

Example: GPUD-A 1, GPUD-B 1, DPUD-B 2, etc..

3.5.2 Review Process

- A. **Detailed Site Plan and Planned Unit Development Ordinance**
1. Except as modified below, the Plan Commission and appropriate legislative body must review and take final action on the Detailed Site Plan and Detailed Planned Unit Development Ordinance portion of a Planned Unit Development application, following the review process and review criteria established for a Zoning Map Amendment set forth in Sec. 3.3.
 2. In addition to the Zoning Map Amendment review process set forth in Sec. 3.3, prior to review and



Specifications I, Sec. 2

recommendation by the Plan Commission, the Technical Review Committee must deem the Detailed Site Plan and supporting submittals a correct application. The process for determination of correctness is described in subsection 3.1.4E.

Legislative Body Action

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Sec. 10

3. The Plan Director and Plan Commission may recommend and the appropriate legislative body may require additional modifications to the submitted Detailed Site Plan or Detailed Development Plan deemed necessary to create a reasonable transition to, and protection of, adjacent property and public areas, including but not limited to, modifications related to:
 - a. Access and circulation;
 - b. Signs;
 - c. Parking;
 - d. Building design, location, height, orientation, or coverage;
 - e. Outdoor lighting;
 - f. Landscaping;
 - g. Homeowners or property owners associations;
 - h. Open space;
 - i. Topography; and
 - j. Screening.
4. The Plan Director and Plan Commission may recommend and the appropriate legislative body may require that the Detailed Planned Unit Development Ordinance mandate any of the design elements listed in paragraph 3 above for the project.

B. Detailed Development Plan

1. A Detailed Development Plan associated with a Detailed Planned Unit Development is the subdivision plat for the project. Except as modified below, the Plan Commission and appropriate legislative body must review and take final action on the Detailed Development Plan portion of a Planned Unit Development application, following the review process established for a Zoning Map Amendment set forth in Sec. 3.3.
2. In addition to the Zoning Map Amendment review process set forth in Sec. 3.3, prior to review and recommendation by the Plan Commission, the Technical Review Committee must deem the Detailed Development Plan a correct application. The process for determination of correctness is described in subsection 3.1.4E.

Adopt an ordinance as follows:

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

~~A Detailed Planned Unit Development Ordinance in conjunction with or without an Ordinance to amend or change the zone maps as certified by the Plan Commission.~~

~~A General Planned Unit Development Ordinance in conjunction with or without an Ordinance to amend or change the zone maps as certified by the Plan Commission.~~

~~This ordinance must be followed by a Detailed Planned Unit Development Ordinance within the time limitations imposed and before any development.~~

~~A Corridor Planned Unit Development Ordinance in conjunction with or without an Ordinance to amend or change the zone maps as certified by the Plan Commission.~~

~~This ordinance must be followed by a Detailed Planned Unit Development Ordinance within the time limitations imposed and before any development.~~

Specifications I,
Sec. 3

~~Adopt an ordinance as proposed and impose:~~

~~Reasonable Conditions~~

~~Conditions for issuance of Improvement locations permits.~~

~~Reject the proposal~~

~~Return petition for further review and consideration by the Plan Commission.~~

~~This action will be considered a tabling by the Legislative Body.~~

~~Procedures for Applications:~~

~~The establishment of a Planned Unit Development Districts is an amendment to the Zoning Maps referenced by the Zoning Ordinance and must be in compliance with this Specification.~~

~~A Petition to establish a Planned Unit Development District (General and Detailed) can be filed by the following:~~

~~The Legislative Body as a directive to the Plan Commission; or~~

~~All applications must be filed with the Elkhart County Advisory Plan Commission as prescribed in Section 4 of this Specification and the Rules of Procedures adopted by the Plan Commission.~~

~~All petitions for General Planned Unit Development Applications and Detail Plan Unit Development Applications shall be considered at a public hearing.~~

~~The public hearing will be set for a Plan Commission Meeting date after a properly filed application has been received by the staff.~~

Specifications I,
Sec. 3

All petitions will be referred for review and recommendations prior to the Public Hearing as follows:

Detailed Planned Unit Development Application

After a properly filed application has been received by the staff, the application will be set for the next Site Plan Review committee meeting.

The Site Plan Review Committee will meet with the applicants representative and discuss the following:

All non-compliance with Specifications I.

Suggestions to meet the purposes and criteria established by Specifications I.

The Committees recommendations of Compliance

The recommendations will be forwarded to the Elkhart County Plan Commission and placed in the file.

Legal Advertisement as Required by State Law

Note to Reviewers: public notice is covered by the Plan Commission Rules of Procedure

Notice to neighboring property owners shall be by:

First class mail.

Ten days prior to the public hearing.

Sent to all property owners within 300 feet of the real estate addressed in the application.

For all petitions a minimum of four property owners nearest to the petition will be notified.

Of these four none may be the owner of the property subject to this notice.

These property owners names and mailing addresses will be taken from the records in the office of the Auditor of Elkhart County, as they exist on the date of acceptance of the application.

If for any reason the list of property owners is more than 60 days old that list must be re-submitted to the office of the Auditor of Elkhart County for updating.

It shall be the intent of the Elkhart County Plan Commission to reasonably comply with this provision of notice; And that minor omissions of names from the list caused by the County action will not be considered a defect in giving notice under this provision.

Posting of the property subject to the petition shall be ten days prior to the public hearing at or within site of a public right of way with signs provided by the staff at the time of application filing.

Specifications I,
Sec. 3

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

3.5.3 Review Criteria

~~b. Consideration of Proposal for a Planned Unit Development~~

Specifications
I, Sec. 1

The Elkhart County Advisory Plan Commission and the appropriate legislative body ~~shall~~ must review and give reasonable regard to ~~all~~ the proposed Detailed Planned Unit Developments based on the degree to which the proposal meets all of the following criteria.

- A. The proposal is consistent with the Comprehensive Plan. ~~;~~ and
- B. The proposal has demonstrated how the impacts of any increased traffic will be minimized, lessened, or reduced. ~~;~~ and
- C. The proposal ~~recognizes the~~ addresses potential conflicts with and attempts to conserve the value of adjacent properties. ~~and uses;~~ and

~~The proposal demonstrates integration with the adjacent land uses in a manner that attempts to conserve adjacent property values; and~~

- D. The proposal is consistent with the ~~intent~~ Purpose of the Zoning Ordinance as established in Sec. 1.2. to promote public health, safety and general welfare; ~~and~~
- E. The proposal is consistent with the Applicability of a Planned Unit Development as established in Sec. 3.5.1. purposes of this Specification; ~~and~~
- F. The proposal is responsible development and growth.
- G. ~~The proposal complies with~~ When the Plan Commission and Legislative Body is considering a map amendment to DPUD, for a portion of an established GPUD, the Plan Commission and Legislative Body must give reasonable regard to the existing General Planned Unit Development.
- H. The Detailed Development Plan complies with the approved Detailed Site Plan and Planned Unit Development Ordinance.

Specifications
I, Sec. 12

Specifications
I, Sec. 4

~~Submittal Requirements~~

Note to Reviewers: *Submittal requirements do not have to be set out in an ordinance.*

~~Applications for Planned Unit Developments:~~

~~Purpose~~

~~It is the intention of this ordinance to allow for two different applications, a General Planned Unit Development and a Detailed Planned Unit Development.~~

~~Detail Planned Unit Developments~~

Procedures For Application:

Submittal Requirements:

Specifications
I, Sec. 5

Petitioner shall submit the following:

Application forms adopted by the Plan Commission;

The respective application fee, as established by the Elkhart County Advisory Plan Commission and set forth in its Uniform Schedule of Fees in its Rules of Procedure, shall be paid at the time of the filing of the application.

Legal Description for parcel;

Narrative of Request describing the following:

Intention for ownership;

Proposed Land uses and Percentage of site for each uses (e.g. Open Space, Buffers, Single Family residential, Two Family Residential, Multi-Family Residential, Professional Office, Limited Business, General Business, Business and Wholesale, Limited Manufacturing, General Manufacturing);

Intentions regarding water and sewage disposal;

Listing of all deviations from the development standards requested;

Dwelling Densities for residential;

How development relates with surrounding land uses; and

Other information necessary to determine compliance with this Ordinance.

reports: The following reports must be prepared by a qualified person and shall contain the requested information in its entirety:

Specifications
I, Sec. 5

Soil Report (if on site septic systems are to be considered) Soil Report –

This report must be written by a person(s) determined by the Health Department to be proficient in the identification of soils and their properties. (Since all permits for septic systems will require some form of on site soil investigation, the format of the reports should comply with the standards established by the Elkhart County Health Department for residential and commercial septic systems)

The Soil Reports must have the following information:

Specifications
I, Sec. 5

Soil Pit location Site plan.

Logs for all borings or pits.

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

Depth to All Limiting Layers (e.g. Water Tables, Loading Rates Greater than 0.75 gallons per day per square foot or Less than 0.25 gallons per day per square foot,)

Municipal Sewer and Water Report: This report must have the following information:

Distance to nearest public water or sewer utility.

Projected cost for extension and connection

If development is to be on private well and septic reason for not extending and connection. (e.g. not in service area of utility)

Note to Reviewers: Staff has received feedback from Tech Committee that the Highway Drainage Standards should apply to PUDs, rather than the stricken provisions below. See reference to Highway Standards in Article 6.

Storm Water Drainage Report (Note: A rational model may be substituted for the following requirements) This report must contain the calculations for:

Off-site Information

The watershed size draining onto the site with the projected runoff.

The project runoff should use the methodology shown in this subsection.

Undeveloped Site

Projected runoff from the undeveloped site

The project runoff should use the methodology shown in this subsection

Developed Site:

Projected Developed runoff from site.

The project runoff should use the methodology shown in this subsection

Site Retention Calculation:

The developer will be required to retain one hundred percent of the project increased runoff; Plus twenty percent of the undeveloped runoff.

Runoff projection Model

Specifications

I, Sec. 5

CFR x .25 (3 inch rain event)

CFR = Cubic Feet of Runoff.

ART = Square foot area of Runoff based on development type (e.g. Undisturbed grasses, Sodded grass areas, Wooded areas, Pavement area, Drives, Roads, Buildings etc...)

PPR = Percent of projected runoff for the development type.

A drawing showing:

Off-site watershed;

Area Runoff Type;

Storm-water retention

Traffic Projection and Thoroughfare Report – This report must contain the following:

Description of existing road surface and right of way (e.g. two lane vs four lane, concrete vs chip and seal, swale vs curb and gutter, ten foot lanes vs twelve foot lanes etc...)

Vehicle counts from state or local information's sources.

Projected vehicle counts to and from development with peak times.

Projected vehicle count broken down by end trip generated and drive by.

Project Demographic for all Residential Developments (over five acres): The purpose of this report will be to better inform the support services for any given area schools, fire protection, and police of future impacts on their programs.

Site Improvement Report:

Listing of all site improvements;

Projected cost of improvements; and

Time line for installations.

Specifications
I, Sec. 5

Development Plan Requirements – All Development Plans will be on a 18 inch by 24 inch mylar with ten sheets. All of the following items must be addressed or shown on the Development Plan:

Name of Planned Unit Development with location description to the Quarter Quarter Section, Township, Range, and Political Township. The name of Planned Unit Developments must be unique and not similar in nature to other recorded Planned Unit Developments or Subdivisions;

Legal description;

Scale used must be either one inch equals 100 feet or one inch equals 50 feet;

Date of Drawing;

Surveyors Certificate;

North Arrow;

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

Boundary of Planned Unit Development shown by a heavy line (unique to drawing) indicating all bearing and lengths. All changes in bearings on the boundary must be shown as monument. The monuments will be noted as being installed after construction of all public or site improvements;

Locations of all existing easements and rights of way; All easements and rights of way to be dedicated for public use; All bearings, lengths, widths and instrument numbers (for all previously recorded documents);

All corporate boundaries, townships, county and section lines and previously platted tracts adjacent to the Planned Unit Development ;

Location of the Special Flood Hazard Area (if site is within the One hundred year flood zone) by a unique line;

General location map showing the Planned Unit Development ;

All development setback lines to property and right of way centerlines;

Notarized certification by owner(s) of property agreeing to the Planned Unit Development and the Development plan;

Certifications of compliance with Specifications I. Signed by the Chairman and the Secretary of the Plan Commission;

Specifications I, Sec. 5 of Adoptions and Compliance with Specifications – I by the Legislative Body with approval over the real estate within the Planned Unit Development;

Auditor statement;

Recorder Statement; and

Planned Unit Development Ordinance Number.

Site Plan/Support Drawing : All of the following items must be addressed or shown on the Support Drawing with eleven copies (all improvements must be shown in order to reduce the need for major / minor change decision in the future):

Name of Planned Unit Development;

Legal Description;

Scale used [must be either one inch equals 100 feet or one inch equals 50 feet];

Developments building set back lines;

Name of Surveyor and address;

North Arrow;

~~Building Coverage calculations;~~

~~All proposed structure(s) and Improvements;~~

~~All phasing of projects;~~

~~Building Separations on site;~~

~~Building separations to adjacent off site buildings within 100' of petitioners property;~~

~~Demonstrations of Vehicle and Pedestrian Circulation;~~

~~Parking areas;~~

~~Landscaping;~~

~~Height, scale, materials, and style of improvements;~~

~~Signage (location, height, and size);~~

~~Recreation Space;~~

~~Outdoor Lighting (all lighting must be maintained to reduce off site impacts);~~

~~Name of Owner and Developer and address;~~

~~Boundary of Planned Unit Development by unique and identified line;~~

~~Adjacent parcels boundaries lines shown in hatched lines;~~

~~All property lines and easements;~~

~~All monuments and corner marker;~~

~~All residential and commercial driveways adjacent to and within 200 feet;~~

~~Locations of all existing utilities;~~

~~Location and distances to sanitary sewer and municipal water;~~

~~Location of existing well and septic onsite;~~

Specifications

I, Sec. 5

~~Best available information show the location of all off site well(s) and septic(s) within 100' of the petitioners property;~~

~~Location of all onsite well(s), septic(s) area and septic repair area(s);~~

~~Soils as identified in the Soil Report;~~

~~The one hundred year floodplain designated by a unique line;~~

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

Contours in two foot intervals;

Identifications of all land uses;

All information shown on the General Development Plan from the GPUD ordinance. (If the petition is for a portion of GPUD)

3.5.4 Concurrent Submittal

An applicant may submit a Detailed Development Plan concurrent with the Detailed Site Plan and supporting materials. However, the appropriate legislative body must approve the Detailed Site Plan and Detailed Planned Unit Development Ordinance prior to approval of the Detailed Development Plan.

3.5.5 Planned Unit Development Ordinance

The All ordinance that approves the Detailed Planned Unit Development adopted by the legislative body with jurisdiction over the real estate after "certification of the proposal" from the Elkhart County Plan Commission. The Planned Unit Development Ordinance may contain the following:

- A. Written text as prescribed by the Legislative Body;
- B. A legal description of a parcel the subject property;
- C. Specific development requirements, including any additionally imposed design elements listed in subsection 3.5.2A.3;
- D. The Detailed Development Plan to be incorporated by reference for Detailed Planned Unit Developments or the General Development Plan for General Planned Unit Developments;
- E. The Detailed Site Plan/Support Drawing to be incorporated by reference for Detailed Planned Unit Developments only;
- F. List of permitted uses and range of uses;
- G. Documentation and supporting information that may be required;
- H. Limitations to the Detailed Planned Unit Development;
- I. List of all conditions imposed on the Detailed Planned Unit Development; and
- J. List of all proposed site improvements and construction time lines with the procedures to ensure the timely completion of those public improvements.

3.5.6 Recording and Platting of a Detailed Planned Unit Development

A. Purpose

It shall be the intention of this Specification to is prohibited the recording to record in the Recorders Office of Elkhart County any documents or plats for any real estate within the un-incorporated

Specifications
I, Sec. 9

Specifications
I, Sec. 11

~~areas of Elkhart County, the Town of Millersburg, the Town of Bristol, the Town of Middlebury, the Town of Wakarusa jurisdiction of this Ordinance with any designations of "Planned Unit Development" or "PUD" unless it complies with this Specification Ordinance.~~

B. Recording of a Planned Unit Development Detailed Development Plan

~~The approved Detailed Planned Unit Development Ordinance shall Development Plan must be recorded by the staff applicant within ten working days of receipt of the signed documents from the appropriate legislative body and receipt of checks for recording from the petitioner.~~

3.5.7 Flood Hazard Control Deviations

~~Limitations for Planned Unit Development Proposals~~

~~All proposals for General Planned Unit Developments and Detailed Planned Unit Developments will be limited by the following:~~

~~No designated uses listed in the Conditional Industrial Unit Development will be permitted within a Planned Unit Development District.~~

Specifications
I, Sec. 1

~~No deviations from the development Flood Hazard Control standards in Sec. 7.4 will be are permitted pertaining to Specifications L Flood Hazard Control. All variances deviations from Sec. 7.4 must be processed as Variances in accordance with Sec. 3.7. requested from the Board of Zoning Appeals.~~

~~BASIC REQUIREMENTS.~~

Specifications
O, Sec. 1

~~A CORRIDOR DISTRICT boundary shall encompass those properties fronting along the District's major arterial and properties fronting intersecting streets that are functionally or physically related to the major arterial. The length and depth of individual DISTRICTS will vary depending upon the character of the DISTRICT itself. Character factors include the size and capacity of the major arterial and intersecting streets, lot sizes, topography, existing development patterns, utilities, etc. Boundaries will be determined at the time a DISTRICT is created.~~

~~PROCEDURES FOR ESTABLISHING DISTRICT~~

~~General Requirements.~~

~~An application for establishing a PLANNED DEVELOPMENT CORRIDOR DISTRICT shall be filed as a zoning map amendment to this Ordinance, comply with Elkhart County Plan Commission Rules of Procedure and the Corridor District Ordinance and be filed no less than 30 days prior to the Plan Commission~~

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

meeting at which it is to be heard. A proposal to establish a DISTRICT may be initiated by the Plan Commission or by a petition signed by the property owners of no less than 75% of the land involved.

Specifications O,
Sec. 1

Preliminary Review:

Preliminary review of a proposed CORRIDOR DISTRICT is required for those applications initiated by petition of property owners. Prior to filing an application for a CORRIDOR DISTRICT, the petitioner(s) shall submit to the Planning and Development Department no less than six (6) copies of the proposal for a DISTRICT.

The proposal shall include a map indicating the boundaries of the proposed DISTRICT, any use or developmental standard restrictions being recommended and any other information required by the Department. Elkhart County Technical Committee shall review the proposal for compliance with all applicable County Ordinances and the Comprehensive Plan.

General discussions may be conducted between the Department staff and the petitioner(s) to clarify the proposal or to incorporate necessary modifications.

Plan Commission Action:

The Plan Commission shall conduct a public hearing on a proposed CORRIDOR DISTRICT and forward its recommendation, consisting of any conditions, standards or restrictions, and the CORRIDOR DISTRICT boundary map to the County Commissioners for final action.

Final CORRIDOR DISTRICT Approval

Final CORRIDOR DISTRICT plan, consisting of the boundary map and all conditions, standards, or restrictions recommended by the Plan commission shall be forwarded to the County Commissioners for appropriate final action.

All development within a CORRIDOR DISTRICT shall comply with the final DISTRICT plan (map, conditions, standards and restrictions) as approved by the County in conjunction with the requirements of the underlying zoning district(s)

Rezoning

Rezoning within an established CORRIDOR DISTRICT shall follow the standard rezoning procedures except as modified in this Section. All use and developmental standards of the underlying zoning district shall remain in force unless modified by this Section, in which case the standards of the CORRIDOR DISTRICT shall have precedence.

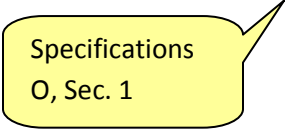
Zoning Clearance Permit

A detailed site plan shall be submitted to the Planning and Development Department staff prior to the issuance of an Improvement Location Permit and any building permits. Staff shall review the plan to

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

~~insure conformity with the conditions, standards, restrictions and provisions of the approved CORRIDOR DISTRICT and shall have the authority to require and approve final site plan standards within the parameters established by the DISTRICT plan and this Ordinance. An Improvement Location Permit shall be issued only upon acceptance of the site plan by staff.~~

A yellow callout box with a black border and a pointer pointing towards the top right. It contains the text "Specifications O, Sec. 1".

Specifications
O, Sec. 1

Article 3 Development Review Procedures

Sec. 3.5. Detailed Planned Unit Development

Conditional Industrial Unit Development

Note to Reviewers: *The Technical Committee recommends that the Conditional Industrial Unit Development procedure be removed from this Ordinance. Now that the Plan Commission can recommend, and the County Commissioners can require, commitments as part of a basic rezoning, the usefulness of a CIUD is minimal.*

All Special Uses and all Conditional Uses as approved under the Zoning Ordinance, Number 1680, for the City of Elkhart, Indiana, as amended, located in the unincorporated areas of the County, shall remain as Special Uses or Conditional Uses, and all conditions set forth for those uses shall remain in force, unless those uses, conditions or both shall be amended under this ordinance.

Specifications

F, F

Sec. 3.6. Special Use Permit



3.6.1 Applicability

- A. A Special Use Permit provides a means for developing certain uses in a manner in which the Special Use will be compatible with adjacent property and consistent with the character of its area. The granting of a Special Use Permit has no effect on the uses permitted as of right on the subject property and does not waive the provisions of this Ordinance that apply to the property.

The General provisions applicable to the district in which the Special Use is located are also applicable to the Special Use in that district.

- B. Special Uses generally may have unusual nuisance characteristics or are of a public or semi-public nature often essential or desirable for the general convenience and welfare of the community. Because, however, of the nature of the use or possible adverse impact on neighboring properties of the use, review, evaluation and exercise of planning judgment relative to the general location and site plan of the proposed use are required.
- C. Uses requiring a Special Use Permit are identified in the use table in Sec. 5.2 and in the lists of permitted uses in the special purpose and overlay zoning districts in Article 6.
- D. The Zoning Administrator must not accept an application for a Special Use Permit for a use not listed in the relevant zoning district.
- E. The Hearing Officer makes the final decision on Special Use Permits for mobile homes. The Board of Zoning Appeals makes the final decision on all other Special Use Permits.

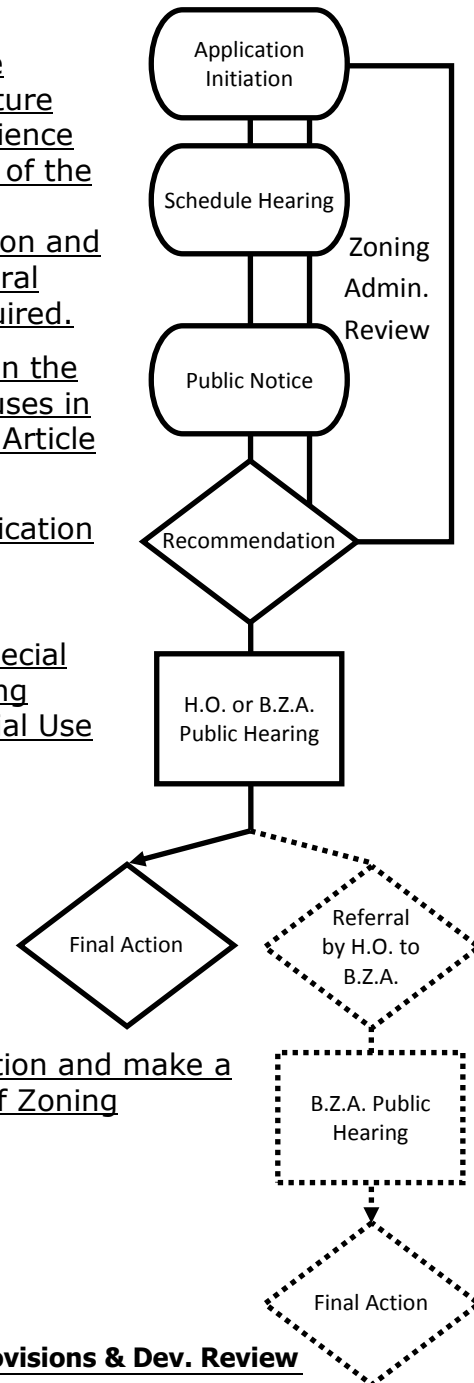
3.6.2 Review Process

A. Concurrent Site Plan Submittal

Application for a Special Use Permit must occur in conjunction with the submittal of a site plan.

B. Zoning Administrator Review

The Zoning Administrator must review the application and make a recommendation to the Hearing Officer or Board of Zoning Appeals, as appropriate.



Specifications
F, G

C. Hearing Officer or Board of Zoning Appeals Final Action

Following notice in accordance with the Board of Zoning Appeals Rules of Procedure, the Hearing Officer or Board of Zoning Appeals, as appropriate, must hold a public hearing and approve, approve with conditions or commitments, or deny the Special Use Permit.

D. Referral

The impositions of conditions, ~~requirements of commitments,~~ or any other adverse action by the Staff or Hearing Officer ~~shall~~ permits the applicant to obtain a transfer to the Board of Zoning Appeals before obtaining a decision.

The Board of Zoning Appeals may, after public hearing and hearing according to law, grant the permit, and may impose conditions on the use which the Board deems essential to insure that the Special Use is consistent with the spirit, purpose and intent of this ordinance, shall not substantially and permanently injure the appropriate use of neighboring property, and shall substantially serve the public convenience and welfare.

Art.6,
Sec.12

Specifi
cation
s F, B

3.6.3 Review Criteria

In determining whether to approve, approve with conditions or commitments, or deny a Special Use Permit, the Hearing Officer or Board of Zoning Appeals must consider and make affirmative findings for all of the following criteria. A negative finding for any of the following criteria must result in a denial of the Special Use Permit request.

Hearing Officer

Art.6,
Sec.11

A special use may only be approved by the Hearing Officer upon a written determination that:

- A. The Special Use is consistent with the ~~spirit, purpose and intent~~ of this Ordinance as established in Sec. 1.2.
- B. The Special Use ~~That~~ it will not substantially and permanently injure the appropriate use of neighboring property. ~~;~~ and
- C. The Special Use ~~That~~ it will substantially serve the public convenience and welfare.

Art.6,
Sec.7

The Hearing Officer may impose conditions as part of his approval.

Board of Zoning Appeals

~~shall hear, and approve or deny, all special uses as specified in the Zoning Ordinance. A special use may be approved under this section only upon a written determination that:~~

~~The special use is consistent with the spirit, purpose and intent of this ordinance;~~

~~It will not substantially and permanently injure the appropriate use of neighboring property; and~~

~~It will substantially serve the public convenience and welfare.~~

~~The Board may impose conditions as part of its approval.~~

~~Every application for Special Use Permit shall be accompanied by the fee set by the Elkhart County Advisory Plan Commission in its Uniform Schedule of Fees to its Rules of Procedure.~~

3.6.4 Duration

~~All Special Uses and all Conditional Uses as approved under the Zoning Ordinance, Number 1680, for the City of Elkhart, Indiana, as amended, located in the unincorporated areas of the County, shall remain as Special Uses or Conditional Uses, and all conditions set forth for those uses shall remain in force, unless those uses, conditions or both shall be amended under this Ordinance.~~

An approved Special Use Permit runs with the land unless commitments to the contrary are placed on the approval. The Special Use must be established as represented on the Special Use Permit site plan within 24 months of approval or the Permit becomes null and void.

3.6.5 Renewal of Mobile Home Special Use Permit

- A. A Special Use Permit for a mobile home must be granted for a limited period of time ~~by the Board of Zoning Appeals~~. The Zoning Administrator may repeatedly renew a mobile home Special Use Permit for a period of time which is not longer than the period of time for which the original Special Use Permit was granted.
- B. The renewal of the Special Use Permit can only be granted by the Zoning Administrator if it is determined that the mobile home complies with all of the following conditions. ~~have been complied with:~~
 - 1. The property and mobile home have adhered to all conditions and commitments imposed on the original Special Use Permit. ~~have been adhered to, and;~~
 - 2. The property and mobile home have been maintained in a respectable good condition. ~~;~~ and
 - 3. The mobile home and its location remain consistent with the County Comprehensive Plan.

~~The land owner and occupants are the same as considered by the Board of Zoning Appeals.~~

- C. If the Zoning Administrator renews the Special Use Permit, then a letter stating that renewal will must be sent to the applicant.
- D. If the Zoning Administrator declines to renew the Special Use Permit, then a letter of denial will must be sent to the applicant. The ~~staff will~~ Zoning Administrator must, within 30 days of the denial letter, set the renewal request for consideration before the ~~full~~ Board of Zoning Appeals as a staff item which does not require public notice or a public hearing.

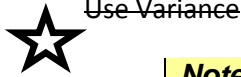
Specifications
F, C

Specific
ations
F, F

Draft E –
Sec.
7.08.F

Specifications
F, D

Sec. 3.7. Variance



Use Variance

Note to Reviewers: Staff's critique recommendation is to remove the Use Variance from the Zoning Ordinance.

shall hear, and approve or deny, variances of use from the terms of the Zoning Ordinance.

A use variance may be approved by the Board only upon a written determination that:

The approval will not be injurious to the public health, safety, morals and general welfare of the community.

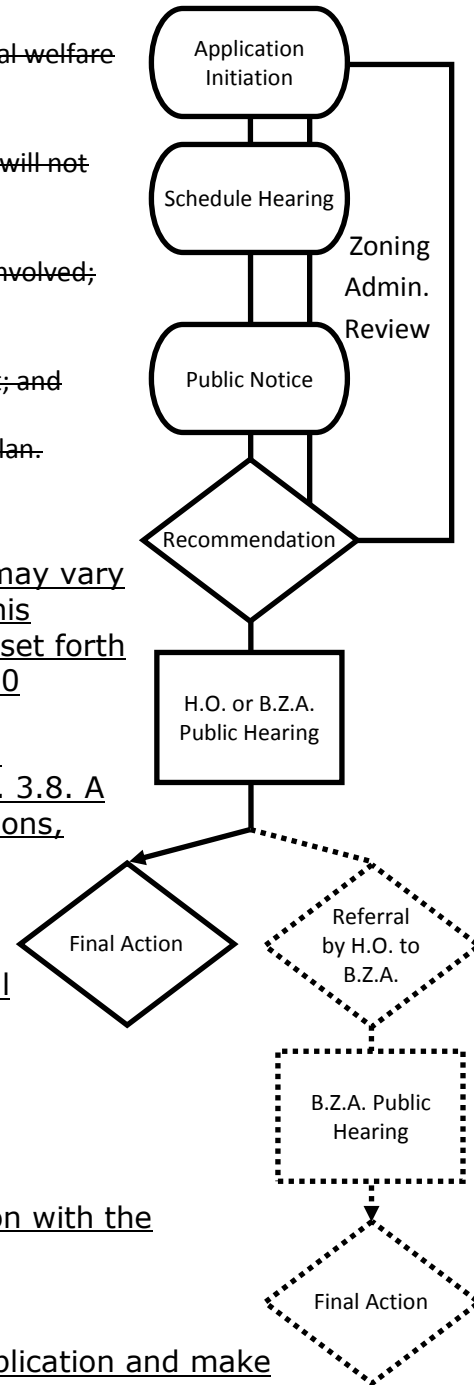
The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

The need for the variance arises from some condition peculiar to the property involved;

The strict application of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property for which the variance is sought; and

The approval does not interfere substantially with the County Comprehensive Plan.

Art. 6,
Sec. 7



3.7.1 Applicability

- A. The Hearing Officer and Board of Zoning Appeals may vary the developmental or dimensional regulations of this Ordinance for projects that meet all of the criteria set forth in this Section. Any request for relief from up to 10 percent of a minimum front, side or rear setback requirement may be processed as a request for an Administrative Adjustment in accordance with Sec. 3.8. A Variance is considered an exception to the regulations, rather than a right, and must be the minimum necessary to afford relief.
- B. A Variance from the permitted uses established in the use table in Sec. 5.2 and listed in the special purpose and overlay zoning districts in Article 6 is prohibited.

3.7.2 Review Process

- A. **Concurrent Site Plan Submittal**
Application for a Variance must occur in conjunction with the submittal of a site plan.
- B. **Zoning Administrator Review**
 - 1. The Zoning Administrator must review the application and make

a recommendation to the Hearing Officer.

- 2. If the Zoning Administrator recommends denial of the request, then the Zoning Administrator must forward the request directly to the Board of Zoning Appeals for final action.

C. Hearing Officer or Board of Zoning Appeals Final Action

Following notice in accordance with the Board of Zoning Appeals Rules of Procedure, the Hearing Officer or Board of Zoning Appeals, as appropriate, must hold a public hearing and approve, approve with conditions or commitments, or deny the Variance.

D. Referral

The impositions of conditions, ~~requirements of commitments,~~ or any other adverse action by the Staff or Hearing Officer ~~shall permits~~ the applicant to obtain a transfer to the Board of Zoning Appeals before obtaining a decision.

Art.6,
Sec.12

Art.6,
Sec.7

~~shall hear, and approve or deny, variances from the development standards of the Zoning Ordinance.~~

3.7.3 Review Criteria

In determining whether to approve, approve with conditions or commitments, or deny a Variance, the Hearing Officer or Board of Zoning Appeals must consider and make affirmative findings for all of the following criteria. A negative finding for any of the following criteria must result in a denial of the Variance request.

~~A Variance may be approved by the Hearing Officer only upon a written determination that:~~

Note to Reviewers: 2 new and 1 modified Variance criteria are added that reflect common practice elsewhere. These new criteria require that the hardship be based on a condition unique to the subject property, that the need for the variance isn't the applicant's own fault and that the basis of the request not solely be based on economics.

Art.6,
Sec.11

- A. The approval will not be injurious to the public health, safety, morals and general welfare of the community.
- B. 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~~
- C. There are extraordinary or special conditions affecting the subject property such that the strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.
- D. The conditions that create the need for the Variance are not the result of the applicant's own actions.
- E. The applicant's reasons for the Variance request are not solely economic in nature.

Article 3 Development Review Procedures

Sec. 3.7. Variance

F. In a Flood Hazard Area, the granting of the requested Variance from the provisions in Sec. 7.4 will not increase flood heights, create additional public expense, create a nuisance, cause fraud or victimization of the public, or conflict with existing laws and ordinances.

Specifications
L, Sec. 7

~~A variance may be approved by the Board only upon a written determination that:~~

~~The approval will not be injurious to the public health, safety, morals and general welfare of the community;~~

Art.6,
Sec.7

~~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~~

~~The strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.~~

3.7.4 Variances in a Flood Hazard Area

~~The Board shall hear requests for variances as permitted by Article 6. Section 7. a.(4) from the standards, terms and provisions of this specification provided the applicant demonstrates that:~~

~~There exists a good and sufficient cause for the requested variance;~~

~~The strict application of the terms of this ordinance will constitute an exceptional hardship to the applicant; and~~

Specifications
L, Sec. 7

The Board of Zoning Appeals may issue a Variance ~~to the terms and provisions of this specification~~ from the provisions in Sec. 7.4 subject to the following standards and conditions:

- A. ~~No Variance or exception~~ for a residential use within a floodway, Sec. 7.4.2, may be granted.
- B. Any Variance ~~or exception~~ granted in a floodway subject to Sec. 7.4.2 ~~will require~~ a permit from Indiana Department of Natural Resources.
- C. A ~~Variances or exceptions~~ to the Building Protection Standards of Sec. 7.4.3 may be granted only when a new 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.
- D. A ~~Variance or exception~~ may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, Districts, and Objects.

~~All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and~~

- E. The Board of Zoning Appeals shall ~~shall~~ must issue a written notice to the recipient of a Variance that the proposed construction will be subject to increased risks to life and property and could require payment of excessive flood insurance premiums.

3.7.5 Duration

An approved Variance runs with the subject property until such time as the property conforms with the Zoning Ordinance or unless commitments to the contrary are placed on the approval.

Draft E –
Sec.
7.10.F

Sec. 3.8. Administrative Adjustment

Note to Reviewers: As of November 20, 2012, this procedure is being proposed as an amendment to existing Zoning Ordinance. It will be included here in its final adopted form. What follows are draft provisions that are pending adoption by the Board of County Commissioners.



3.8.1 Applicability

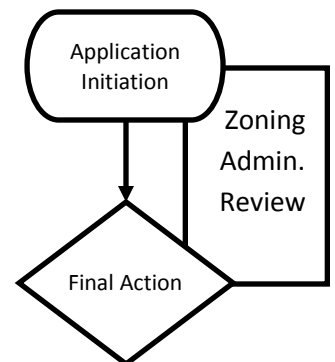
- A. Administrative Adjustments are minor specified deviations from otherwise applicable standards of this Ordinance as specified in this Section.
- B. Except as provided in Sec. 3.8.4 below, the Zoning Administrator has the authority to approve an Administrative Adjustment of up to 10 percent of any front, side or rear setback standard as set forth in this Ordinance.
- C. Structures receiving an Administrative Adjustment must comply with all other requirements of this Ordinance not specifically relieved by the Adjustment.
- D. Any requested Adjustment not in accordance with what is permitted in this Section must be processed as a Variance in accordance with Sec. 3.7.
- E. A request for an Administrative Adjustment may be submitted along with an Improvement Location Permit application; however, the Improvement Location Permit may not be approved until the Administrative Adjustment is approved.

3.8.2 Review Process

The Zoning Administrator must approve, approve with conditions or deny the Administrative Adjustment.

3.8.3 Standards Ineligible for Relief

- A. No condition, commitment or site plan approved by the County Commission, Plan Commission, Board of Zoning Appeals or Hearing Officer is eligible for an Administrative Adjustment.
- B. No Administrative Adjustment is allowed for work that originally occurred without the appropriate permits.
- C. No structure may receive an Administrative Adjustment may receive approval to extend into any easement without first receiving approval from the Plan Commission or Plat Committee, as appropriate, for the modification of the easement, vacation of the easement or a change in the recorded plat regarding the easement to accommodate the Administrative Adjustment.



3.8.4 Review Criteria

In determining whether to approve, approve with conditions or deny an Administrative Adjustment, the Zoning Administrator must consider the following criteria.

- A. The Administrative Adjustment does not adversely affect the permitted use of adjacent property or the physical character of the surrounding area
- B. Granting the Administrative Adjustment will be generally consistent with the purpose of this Ordinance as established in Sec. 1.2.
- C. The Administrative Adjustment requested is the minimum adjustment necessary for reasonable use of the property and compliance with this Zoning Ordinance.

3.8.5 Relief Not Cumulative

The Zoning Administrator may grant only one form of administrative relief established in this Zoning Ordinance related to the standard for which relief is being sought. Other forms of administrative relief include, but are not limited to, those established in Article 4.

Note to Reviewers: *The citation above is for setback averaging and the 20% rule that allows encroachment along a building line into a setback. Similar wording to this could be repeated in the setback averaging and 20% sections.*

3.8.6 Duration

- A. An Administrative Adjustment applies only to the structure and associated setback shown on the approved site plan for the Adjustment.
- B. An approved Administrative Adjustment expires unless an Improvement Location Permit for the associated structure is approved within 90 calendar days from the date of approval of the Adjustment. In addition, an Administrative Adjustment expires unless construction work is completed within one year from the date of the issuance of the Building Permit for the associated structure.



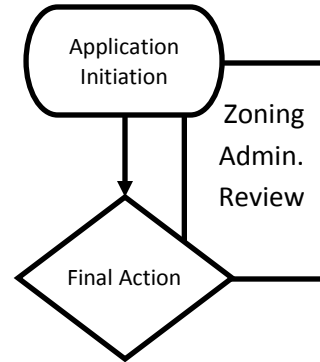
Sec. 3.9. Written Interpretation

3.9.1 Applicability

The Zoning Administrator has the authority to make written interpretations concerning the provisions of this Ordinance.

3.9.2 Review Process

- A. The Zoning Administrator must review and evaluate a written interpretation request in light of the text of this Ordinance, the Zoning Map, the Comprehensive Plan and any other relevant information. The Zoning Administrator may consult with other staff, as necessary.
- B. The Zoning Administrator must render an opinion and provide the interpretation to the applicant in writing within 10 days of receiving the request.



3.9.3 Official Record

- A. The Zoning Administrator must maintain an official record of interpretations. The record of interpretations must be available for public inspection during normal County business hours.
- B. Annually, written interpretations must be summarized in a report to the Plan Commission and Board of Zoning Appeals. Based on the report, the Plan Commission may direct the Zoning Administrator to initiate such Zoning Ordinance Text Amendments as it deems appropriate to be processed in accordance with Sec. 3.2.

Sec. 3.10. Improvement Location Permit

and Plats



3.10.1 Applicability

- A. Except as exempted in this Section, an Improvement Location Permit is required prior to the:
1. Permanent erection, reconstruction, alteration, movement, conversion, extension or enlargement of a structure or improvement;
 2. Placement of a mobile or manufactured home on a property;
 3. Paving of an area greater than 539 square feet or an area greater than 10 percent of the square footage of paved area on the property; or

Note to Reviewers: 3 above requires an ILP for 3 or more off-street parking spaces or increasing the paved area on a property by 10% of its existing square footage. The reason for this trigger is to allow for drainage review.

4. Establishment of a new nonresidential land use or change of an existing nonresidential land use from one use category established in Sec. 5.3 to another.

Note to Reviewers: 4 above requires an ILP for a significant change in use. For example, a change in use from a book store to a barber shop would not require an ILP. A change from a book store to a restaurant would require an ILP. The reason for this trigger is to allow for parking review and other types of review.

Art.5,
Sec.2

no structure, improvement or use of land may be altered, changed, placed, erected or located on platted or unplatted lands, unless the structure, improvement or use and its location conform with the County Comprehensive Plan and County ordinances and an Improvement Location Permit for that structure, improvement or use has been issued.

- B. The issuance of an Improvement Location Permit cannot substitute for or supersede the requirement of any ordinance adopted by the Board of County Commissioners which requires the issuance of a Building Permit before the construction of any building or structure. The issuance of an Improvement Location Permit does not waive any requirement of any pertinent Municipal, County, State or Federal ordinance, rule, regulation or law.
- C. Among other approvals, an applicant must receive approval of an Improvement Location Permit prior to issuance of a Building Permit.

3.10.2 Permit Not Required

- A. An Improvement Location Permit is not required for the following improvements or activities.

Article 3 Development Review Procedures

Sec. 3.10. Improvement Location Permit

Draft E –
Sec.
7.02.B

1. **Small Structures**

An accessory structure that is not on a permanent foundation and is less than 120 square feet in area does not require an Improvement Location permit.

2. **Landscaping and Hardscaping**

The installation of plants, the application of mulch or fertilizer, the raising of planting beds and the installation of hardscaping, including stone steps, edging, and retaining walls less than three feet in height, does not require an Improvement Location Permit.

3. **Signs**

An Improvement Location Permit is not required prior to obtaining a Sign Permit.

4. **Play Sets and Pools**

The installation of play sets and temporary above-ground swimming pools does not require an Improvement Location Permit.

5. **Home Occupations or Home Workshops / Businesses**

The establishment of a permitted home occupation or a home workshop / business that does not involve new construction does not require an Improvement Location Permit.

6. **Property Maintenance**

The maintenance and repair of existing structures and site improvements does not require an Improvement Location Permit.

- B. A project that is exempted from obtaining an Improvement Location Permit is not exempted from meeting all other applicable regulations in this Ordinance.

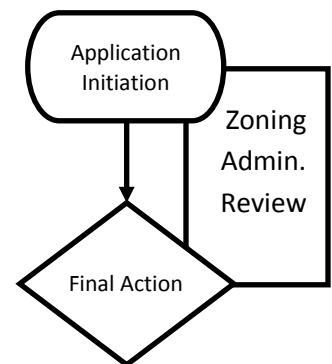
3.10.3 Review Process

~~The Zoning Administrator shall issue an~~ must approve, ~~approve with conditions or deny the Improvement Location Permit, upon written application.~~

3.10.4 Review Criteria

In determining whether to approve, approve with conditions or deny an Improvement Location Permit, the Zoning Administrator must consider the following criteria.

- A. ~~when~~ The proposed structure, improvement or use and its location conform in all respects to the County Comprehensive Plan complies with the provisions of this Ordinance and any applicable Written Interpretations.



- B. The proposed structure, improvement or use complies with any approved plat or Planned Unit Development, Special Use Permit or Variance governing the subject property.

Location of Buildings.

Except as otherwise provided in this ordinance, no Improvement Location Permit shall be issued for any building unless

Art.3,
Sec.5

- C. ~~The proposed building structure, improvement or use is to be located on a lot or parcel of land which property that:~~

1. ~~Abuts a public street which- right-of-way that has been constructed or for which a bond has been accepted, guaranteeing its construction; or~~

~~Has been accepted by the Board of County Commissioners and which:~~

~~Has been constructed and paved, or for which a surety or bond has been accepted, guaranteeing its construction, paving, or both; or~~

~~Has been maintained as a numbered public state, federal or County road; or~~

~~Has been constructed and maintained by the County or is maintained to County standards; and~~

2. ~~Has indirect access to a public right-of-way Is on through a permanent access easement of access to a public street, approved as a lot width Variance in accordance with Sec. 3.7. by the Board of Zoning Appeals after a public hearing.~~

~~Under the provisions of IC 13-2-22 a permit (or Letter of Review and Release) from the Natural Resources Commission 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 building.~~

Art.5,
Sec.4

3.10.5 Improvement Location Permit Required Within a Special Flood Hazard Area

Note to Reviewers: Any opportunity to shorten this part would be welcome.

Specifications
L, Sec. 2

- A. No development is permitted in the Special Flood Hazard Area without first obtaining an Improvement Location Permit. The Zoning Administrator shall may not issue an Improvement Location Permit if the proposed development does not meet the requirements of this specification subsection.

The application for an Improvement Location Permit shall be accompanied by the following:

Note to Reviewers: Submittal requirements do not have to be set out in an ordinance.

Article 3 Development Review Procedures

Sec. 3.10. Improvement Location Permit

A description of the proposed development;

A site development plan drawn to scale showing:

Existing and proposed structures;

Existing and proposed land grades;

Location in relationship to existing roads, streams, and property lines;

All distances (must be dimensioned) between structures, lot lines (property lines), roads, and streams, etc.....

A legal description of the property site and the existing parcel code number (tax code number).

Elevation of lowest floor (including basement) of all proposed structures at the Flood Protection Grade.

B. ~~The Zoning Administrator~~ County Engineer or a Municipal Engineer, as appropriate, ~~shall~~ must determine if the structure or the site is located within an identified floodway or within the floodplain where the limits of the floodway have not yet been determined. ~~;~~ and

1. If the structure is in an identified floodway the ~~Zoning Administrator~~ County Engineer or a Municipal Engineer ~~shall~~ must require the applicant to secure a permit (~~or statement of release~~) from the Department of Natural Resources for any construction in a floodway. The Improvement Location Permit can only be released if it is as restrictive or more restrictive than the permit issued by the ~~Indiana~~ Department of Natural Resources. ~~;~~ or

2. If the structure is located in an identified floodway fringe, the ~~Zoning Administrator~~ County Engineer or a Municipal Engineer ~~will~~ must issue the Improvement Location Permit provided:

a. The provisions contained in Sec. 7.4 of this ~~specification~~ Ordinance have been met; and,

b. That the lowest floor of any new or substantially improved structure ~~shall~~ must be at or above the Flood Protection Grade.

3. If the structure is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined (shown as Zone A on the Flood Insurance Rate). The ~~Zoning Administrator~~ County Engineer or a Municipal Engineer ~~shall~~ must require the applicant to secure a permit or letter of recommendation approving the proposed development from the ~~Indian~~ Department of Natural Resources. The improvement Location Permit can only be issued if it is as restrictive or more restrictive than the permit issued by the Indiana Department of Natural Resources.

Specifications
L, Sec. 2

All development other than structural shall require an Improvement Location Permit released as regulated in Section 2. c. of this specification.

3.10.6 Duration

Art.5,
Sec.2

That permit shall be valid for six months after the date of issuance, or for the length of validity of a Building Permit, if that Building Permit is obtained for the structures or buildings covered by the Improvement Location Permit within the six month limitation.

Draft E –
Sec.
7.02.F

- A. A project requiring an Improvement Location Permit must commence within six months of approval or the Permit becomes null and void.
- B. A development must be completed within 24 months of approval of an Improvement Location Permit, or the Permit becomes null and void.
- C. The Zoning Administrator ~~shall have the power to~~ may renew the Improvement Location Permit a maximum of two times for a duration of 30 days each. If additional renewals are needed, then the applicant must apply for a new Improvement Location Permit, subject to County standards in place at the time of the new application.

Every application for an Improvement Location Permit shall be accompanied by:

Note to Reviewers: *Submittal requirements do not have to be set out in an ordinance.*

Art.5,
Sec.2

A site plan drawn to scale showing the ground area of the building or structure, the building lines in relation to lot lines, the number of stories or the height of building or structure, the use to be made of the building, or structure, or land, and all other information required by the Zoning Administrator for the proper enforcement of this ordinance.

The respective application fee, as established by the Elkhart County Advisory Plan Commission and set forth in its Uniform Schedule of Fees to its Rules of Procedure, shall be paid at the time of the filing of the application.

The site plan shall be attached to the application for an Improvement Location Permit when it is submitted to the Zoning Administrator and shall be retained by the Plan Commission as a public record.

Any decision of the Zoning Administrator concerning the issuance of an Improvement Location Permit may be appealed to the Board of Zoning Appeals by any person claiming to be adversely affected by that decision.



Sec. 3.11. Temporary Use Permit

Note to Reviewers: A temporary use permit puts tighter control on minor, temporary uses and most importantly requires that the area be cleaned up after the use ceases.



3.11.1 Applicability

A temporary use, as established in Sec. 5.6, may not be commenced until the land owner obtains a Temporary Use Permit. The permit identifies the specific use, the period of time for which it is approved, and any special conditions attached to the approval.

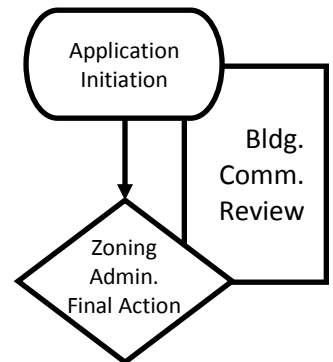
3.11.2 Review Process

A. Building Commissioner Review and Recommendation

The Building Commissioner must review the submitted application and make a recommendation to the Zoning Administrator.

B. Zoning Administrator Final Action

- The Zoning Administrator must approve, approve with conditions or deny the Temporary Use Permit.
- The Zoning Administrator must review all signs in conjunction with the issuance of the permit. Such signs must be in accordance with the requirements of this Ordinance.



3.11.3 Review Criteria

In determining whether to approve, approve with conditions or deny a Temporary Use Permit, the Zoning Administrator must consider the following criteria.

- The extent to which the temporary use complies with the purpose of this Ordinance, the zoning district in which it is located and any specific temporary use standards in Sec. 5.6.
- The extent to which the temporary use does not impair the normal, safe and effective operation of a permanent use on the same site.
- The degree that the temporary use endangers or is materially detrimental to the public health, safety or general welfare or is injurious to property or improvements in the immediate vicinity of the temporary use, given the nature of the activity, its location on the site, and its relationship to parking and access points.

3.11.4 Duration

The Zoning Administrator must set the time limit of the Temporary Use Permit at the time of approval, but in no case may the duration exceed 90 days.

Sec. 3.12. Building Permit

Note to Reviewers: *Elkhart County already has building permits in place, of course, but no procedures in writing in the Zoning Ordinance.*



3.12.1 Applicability

- A. No building may be erected, reconstructed, altered, moved, converted, extended or enlarged and no manufactured or mobile home may be placed on any property without the owner first having obtained a building permit.
- B. Among other approvals, an applicant must receive approval of an Improvement Location Permit prior to issuance of a Building Permit.

3.12.2 Permit Not Required

A Building Permit is not required for those improvements or activities described in Sec. 3.10 that do not require an Improvement Location Permit.

3.12.3 Review Process

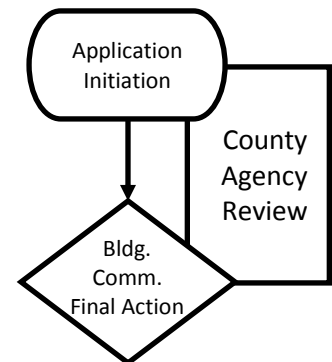
A. Prior County Agency Review

The following persons must have issued applicable approval for a proposed development prior to issuance of a Building Permit by the Building Commissioner:

1. Health Officer;
2. Soil and Water Conservation District Program manager;
3. Zoning Administrator; and
4. County Engineer.

B. Building Commissioner Final Action

The Building Commissioner must approve, approve with conditions or deny the Building Permit.



3.12.4 Review Criteria

In determining whether to approve, approve with conditions or deny a Building Permit application, the Building Commission must consider the following criteria.

- A. The application and proposed structure conforms to all prior approved development applications for the property.
- B. The building plans conform to the Building Code and other applicable construction codes adopted by the County.

Article 3 Development Review Procedures

Sec. 3.12. Building Permit

3.12.5 Duration

An approved Building Permit expires if the work described in the permit has not begun within 12 months from the date of issuance. Any further action after the expiration requires a new application and approval.

Sec. 3.13. Sign Permit

Note to Reviewers: Elkhart County requires permits for signs, but has no procedures in writing in the Zoning Ordinance.



3.13.1 Applicability

- A. No sign may be erected, constructed, altered, moved, extended or enlarged without the owner or operator first obtaining a Sign Permit
- B. The modification of a sign face does not require a sign permit in accordance with this Section, if such modification does not increase the sign area or height or change the sign type.

EXAMPLE: Only changing out the sign face of an existing sign does not require a sign permit.

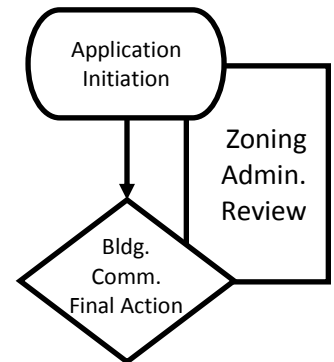
3.13.2 Review Process

A. Zoning Administrator Review and Recommendation

The Zoning Administrator must review the submitted application and make a recommendation to the Building Commissioner.

B. Building Commissioner Final Action

The Building Commissioner must approve, approve with conditions or deny the Sign Permit.



3.13.3 Review Criteria

In determining whether to approve, approve with conditions or deny a Sign Permit, the Building Commissioner must consider the following criteria.



- A. The sign complies with the standards in Sec. 7.3 and any additional sign standards adopted by an appropriate legislative body.
- B. The subject sign is consistent with the provisions of an approved Planned Unit Development, Special Use Permit or Variance governing the subject property.

3.13.4 Duration

An approved Sign Permit does not expire unless an action described in Sec. 3.13.1 takes place. In which case, approval of a new Sign Permit is required.

Sec. 3.14. Certificate of Occupancy

3.14.1 Applicability



- A. No land ~~shall~~ may be occupied or used and no building ~~erected, reconstructed or structurally altered,~~ erected, reconstructed, altered, moved, converted, extended, enlarged, occupied or used, in whole or in part, for any purpose whatsoever, ~~until the Zoning Administrator has issued~~ and no manufactured or mobile home may be placed on any property without the owner first obtaining a Certificate of Occupancy stating that the building, and its use, and required site improvements comply with all applicable provisions of this Ordinance and other County regulations applicable to the building or premises or the use in the district in which it is to be located.
- B. No change in use ~~shall~~ may be made in any building, or part of it, ~~and no building shall be erected, reconstructed or structurally altered until the Zoning Administrator has issued a~~ without the owner first obtaining a Certificate of Occupancy.
- C. Among other approvals, an applicant must receive approval of a Building Permit prior to issuance of a Certificate of Occupancy.

3.14.2 Review Process

A. Zoning Administrator Review and Recommendation

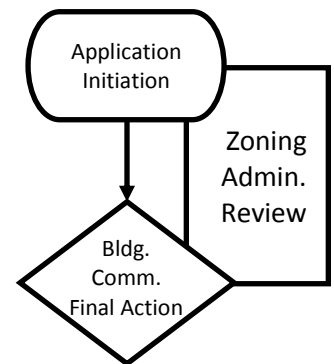
The Zoning Administrator must review the submitted application and make a recommendation to the Building Commissioner.

B. Building Commissioner Final Action

The Building Commissioner must approve, approve with conditions or deny the Certificate of Occupancy.

C. Concurrent Application with Improvement Location Permit

- 1. The Certificate of Occupancy ~~shall~~ must be applied for simultaneously with the application for an Improvement Location Permit and ~~shall~~ must be issued within 10 days after the lawful erection, ~~reconstruction, or structural alteration, moving, conversion, extension or enlargement~~ of that building has been completed.
- 2. No Improvement Location Permit ~~shall~~ may be issued for excavation or for the erection, reconstruction or structural alteration of any building before the person seeking an Improvement Location Permit has applied for a Certificate of Occupancy.



3.14.3 Review Criteria

In determining whether to approve, approve with conditions or deny a Certificate of Occupancy, the Building Commissioner must consider the following criteria.

~~The Zoning Administrator shall not issue any permit to make that change unless The building is in conformity with the provisions of this Ordinance.~~

- A. The location of the structure and required improvements on the property are in accordance with the approved Improvement Location Permit and Building Permit.
- B. Where a change of use in an existing structure is proposed, the use conforms to the use regulations in Article 5 governing the property.
- C. The structure, following inspection by the Building Commissioner, was built in conformity with the Building Code.
- D. There are no outstanding permit requirements.

3.14.4 As-Built Drawings Required

- A. Prior to issuance of a Certificate of Occupancy for a new nonresidential building, an as-built drawing, prepared by a licensed Indiana Land Surveyor must be submitted to the Plan Director. This drawing must contain information to verify compliance with all applicable County ordinances.
- B. The Plan Director may require the property owner to make modifications to the site if changes were made in the field that do not match approved site plan.

Significant change since Tech Committee review

3.14.5 Establishment of a Use Without a Certificate of Occupancy

Note to Reviewers: This should go without saying but it appears to be a common problem.

The establishment of a land use or occupation of a building without an approved Certificate of Occupancy is subject to the enforcement provisions in Article 9.

3.14.6 Duration

An approved Certificate of Occupancy does not expire unless an action described in Sec. 3.14.1 takes place. In which case, approval of a new Improvement Location Permit, Building Permit and Certificate of Occupancy is required.

3.14.7 Record of Certificates of Occupancy

A record of all Certificates of Occupancy shall must be kept on file in the office of the ~~Zoning Administrator~~ Plan Director. Copies shall must be furnished upon request to any person having a proprietary or tenancy interest in the building or land affected and shall must be available for public inspection as provided by State law.

Art.5, Sec.3

Sec. 3.15. Appeal of Administrative or Hearing Officer Decision



3.15.1 Applicability

Powers and Duties

- Art.6, Sec.12
- A. Any order, requirement, decision or determination of an Administrative Official or the Hearing Officer may be appealed to the Board of Zoning Appeals by any person claiming to be adversely affected by that order, requirement, decision or determination.
- B. The Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify any order, requirement, decision or determination appealed from as in its opinion ought to be done. ~~in the premises and~~ To that end, ~~the Board shall have~~ has all the powers vested in the person ~~or board~~ from whom the appeal is taken.
- Art.6, Sec.12
- C. The Board of Zoning Appeals hearing on the appeal ~~shall be~~ is de novo, in the same manner as the petition originally filed with the Board.

~~Shall hear and determine appeals from and review any order, requirement, decision or determination made by Administrative Official Hearing Officer Staff Member or Administrative Board designated by Ordinance, other than the Plan Commission, made in the enforcement of the Zoning Ordinance, and the Subdivision Ordinance or the issuance of building and occupancy permits under Title 36, Article 7 of the Indiana Code;~~

3.15.2 Review Process

- Art.6, Sec.12
- A. **Initiation**
An Appeal ~~shall~~ must be filed within **14 days from** the date of the order, requirement, decision or determination.
- B. **Content of Notice of Appeal**
The notice of appeal must specifically set forth all grounds for appeal.
- C. **Zoning Board of Appeals Final Action**
Following notice in accordance with the Zoning Board of Appeals Rules of Procedure, the Board must hold a public hearing and reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination being appealed.

Art.6, Sec.6

~~Appeals. Any order, requirement, decision or determination of the Administrative Official, Hearing Office or Staff Member may be appealed to the Board by any person claiming to be adversely affected by that order decision or determination.~~

Art.6, Sec.12

~~Notice of hearing on the appeal shall be given 14 days prior to the Board of Zoning Appeals hearing date and may be made a part of the Notice of Hearing by the Hearing Examiner.~~

