

**TITLE 7**  
**ZONING**

## **TITLE 7**

### **ZONING**

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## Chapter 7.00

### COMPREHENSIVE PLAN

#### Sections:

- 7.00.010 Public hearing
- 7.00.020 Comments considered
- 7.00.030 Meets IC 36-7-4-500 requirements
- 7.00.040 Best interest of the City
- 7.00.050 Adoption

**7.00.010 Public hearing.** The Plan Commission of the City of Cannelton, Indiana, did on August 8, 1995 hold a public hearing to consider adoption of the Comprehensive Plan for the city. (Ord. 95-08, Whereas 1, 1995)

**7.00.020 Comments considered.** The Plan Commission did consider said Comprehensive Plan until all comments and objections were heard. (Ord. 95-08, Whereas 2, 1995)

**7.00.030 Meets IC 36-7-4-500 requirements.** The Plan Commission found that the plan meets the requirements of Indiana Code 36-7-4-500, and that adoption of this plan is found to be in the best interest of the city. (Ord. 95-08, Whereas 3, 1995)

**7.00.040 Best interest of the City.** The Common Council finds that it is in the best interests of the City of Cannelton to adopt the Comprehensive Plan. (Ord. 95-08, Whereas 4, 1995)

**7.00.050 Adoption.** The Common Council hereby adopts the Cannelton Comprehensive Plan, made a part hereof, as the Comprehensive Plan of the City of Cannelton, Indiana. (Resolution 95-08, August 28, 1995)

## Chapter 7.01

### INTRODUCTION

#### Sections:

7.01.010	Title
7.01.020	Authority
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7.01.040	Rationale
7.01.050	Purpose
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**7.01.010 Title.** This Title shall be known, cited and referred to as the CITY OF CANNELTON ZONING ORDINANCE except as referred to herein, where it shall be known as “this Title”. (Ord. 96-02, S1, March 25, 1996)

**7.01.020 Authority.** This Title is enacted pursuant to the authority granted by the State of Indiana Statutes. Specific statutory references are provided within the body of this Title solely as a means of assisting the reader. Such references are not to be considered as all inclusive and shall in no manner be construed so as to limit the application or interpretation of this Title.

State Law Reference: Section 36-7-4-601(a), Indiana Code. (Ord. 96-02, S1, March 25, 1996)

**7.01.030 Legislative Intent.** In enacting this Title, special attention has been given to ensuring a direct relationship of these regulations to the City of Cannelton’s Comprehensive Plan. The general intent of this Title is to implement certain goals and objectives of the Comprehensive Plan which are best addressed through zoning approaches. (Ord. 96-02, S1, March 25, 1996)

**7.01.040 Rationale.** Throughout this Title, paragraphs labeled “Rationale” are included to ensure a complete understanding of the purpose and reasoning of the City in adopting that particular portion of this Title. Each Rationale is intended as an official statement of the legislative findings or purposes, and shall serve to guide the administrative and judicial interpretation of this Title. The specific rationale expressed in each Rationale section are not intended to be exhaustive, and other non-explicit rationale may also be applicable. These paragraphs have been legislatively adopted together with the more formal text of this Title and shall be treated in the same manner as other aspects of legislative history. (Ord. 96-02, S1, March 25, 1996)

#### **7.01.050 Purpose.**

- (a) The overall purpose of this Title is to implement the City of Cannelton Comprehensive Plan to the extent possible under zoning.
- (b) This Title is designed to lessen or avoid congestion in public ways; to secure adequate light and air including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of water, groundwater, air quality and other natural resources; to prevent the overcrowding of land; to avoid undue concentration of population; to secure convenience of access, and safety from fire, flood and other dangers; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to conserve the taxable value of land and improvements throughout the City; to preserve and enhance sites, areas and structures of historic, aesthetic, social, cultural, environmental or architectural importance; to provide a rational pattern of relationships between various land uses; and to promote the public health, safety, comfort, morals, convenience, and the general welfare.

State Law Reference: Section 36-7-4-601(c), Indiana Code.

Rationale: In developing the specific regulations of this Title, much effort has gone into balancing the goals and objectives of the Comprehensive Plan. The current status of this Title and its components (including the Official Zoning Map) represents the cohesive result of carefully considered plan implementation practices. Amendments to these provisions and/or the Official Zoning Map shall seriously consider the effect of such changes on the interrelationships which exist within this Title, and between this document, the Comprehensive Plan, and related long-range planning policies and programs. (Ord. 96-02, S1, March 25, 1996)

**7.01.060 Separability.** It is hereby declared to be the intention of the City Council that the several provisions of this Title are separable in accordance with the following:

- (a) If any court of competent jurisdiction shall adjudge any provision of this Title to be invalid, such judgment shall not effect any other provision of this Title not specifically included in said judgment.
- (b) If any court of competent jurisdiction shall adjudge invalid the application of any portion of this Title to a particular property, building, or other structure, such judgment shall not affect the application of said provision to any other property, building, or structure not specifically included in said judgment.

- (c) If any requirement or limitation which is attached to an authorization given under this Title is found invalid, it shall be presumed that the authorization would not have been granted without the requirement or limitation. (Ord. 96-02, S1, March 25, 1996)

**7.01.070 Abrogation.** It is not intended that this Title abrogate or interfere with any constitutionally protected vested right. (Ord. 96-02, S1, March 25, 1996)

**7.01.080 Application and General Provisions.**

- (a) Minimum Requirements.  
In their interpretation and application, the provisions of this Title shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, morals, convenience and welfare.
- (b) More Restrictive Regulations Shall Prevail.  
Where property is affected by the regulations imposed by any provision of this Title and by other governmental regulations, the regulations which are more restrictive or which impose higher standards or requirements shall prevail. Regardless of any other provision of this Title, no land shall be developed or used, and no structure erected or maintained in violation of any state or federal regulations.
- (c) All Structures and Land Uses Shall Conform to this Title.  
No structure shall be constructed, erected, modified, converted, enlarged, reconstructed, altered, placed or maintained, and no land shall be used, modified, or maintained for any purpose nor in any manner and no applicable permit granted which is not in conformity with the provisions of this Title, except as provided under Chapter 7.07 for nonconformities.
- (d) Mixed-Use Developments.  
In cases of mixed-occupancy or mixed-use, the regulations for each land use shall apply to the portion of the structure or land so used.
- (e) Yards and Open Space.  
No yard or other open space shall be considered as providing a yard or open space for a building or structure on any other lot.
- (f) Uses Without Structures.  
Where a zoning lot is to be occupied by a permitted use without structures, the required yards for such lots shall be provided and maintained as set forth in this Title.

- (g) Access To a Public Street Required.  
Every principal building hereafter erected shall be on a zoning lot or parcel which adjoins a public street or a permanent access easement to a public street; such easement to be at least twenty-four (24) feet wide unless a lesser width was duly established and recorded prior to the effective date of this Title.
- (h) One Principal Building Allowed Per Lot.  
One (1) principal building shall hereafter be allowed per lot. More than one (1) multiple-family building per lot may be permitted per the regulations of Section 7.04.030(b)(2). Commercial or industrial developments having more than one (1) principal building per lot may be allowed but only after Special Use approval by the Board of Zoning Appeals. The standards applicable to multiple-family buildings under Section 7.04.030(b)(2)(B) shall also apply to commercial and industrial developments with more than one principal building per lot reviewed as Special Uses. (Ord. 96-02, S1, March 25, 1996)

**7.01.090 Jurisdiction.** This Title is applicable to all territory located within the corporate limits of the City of Cannelton and its extraterritorial zoning and platting jurisdiction area. (Ord. 96-02, S1, March 25, 1996)

**7.01.100 Re-enactment and Repeal.**

- (a) This Title, in part, carries forward by re-enactment some of the provisions of the regulations governing zoning and related matters of the City of Cannelton, adopted prior to the effective date of this Title. It is not the intention of this Title to repeal, but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced, unless explicitly surrendered by specific provisions of this Title or altered by the Official Zoning Map.
- (b) All provisions of the City of Cannelton ordinances governing zoning and related matters which are not re-enacted herein are hereby repealed.
- (c) The adoption of this Title shall not adversely affect the City's right to prosecute any violation of the predecessor ordinances provided the violation occurred while those ordinances were in effect. (Ord. 96-02, S1, March 25, 1996)

**7.01.110 Effective Date.** All plans approved under previous zoning regulations shall be valid and may be used to obtain permits for a period of not more than one year after the effective date of this Title. This Title shall become effective upon passage and posting according to law, following the date of enactment of the Official Zoning Map. (Ord. 96-02, S1, March 25, 1996)

## Chapter 7.02

### DEFINITIONS

#### Sections:

<b>7.02.010</b>	<b>Purpose</b>
<b>7.02.020</b>	<b>Word Usage</b>
<b>7.02.030</b>	<b>Abbreviations</b>
<b>7.02.040</b>	<b>Definitions</b>

**7.02.010 Purpose.** The purpose of this Chapter is to define words, terms and phrases contained in this Title which are essential to the understanding, administration and enforcement of this Title, and which are not common English usage. (Ord. 96-02, S1, March 25, 1996)

**7.02.020 Word Usage.** The interpretation of this Title shall abide by the provisions and definitions of this Chapter, except where the context clearly requires otherwise, where words have been otherwise defined in the chapter or text itself where located, or where the result would clearly be inconsistent with the manifest intent of this Title.

- (a) Words used or defined in one tense or form shall include other tenses and derivative forms.
- (b) Words in the singular number shall include the plural number, and words in the plural number shall include the singular number.
- (c) The masculine gender shall include the feminine and neuter, and the feminine gender shall include the masculine and neuter.
- (d) The words "shall", "must" and "will" are mandatory and are not discretionary.
- (e) The words "may", "can" and "might" are permissive.
- (f) The word "person" includes associations, corporations, firms, government agencies, individuals, joint ventures, partnerships, trusts, and any other similar legal entities.
- (g) The word "used" shall be deemed to include arranged, designed, intended, occupied or maintained.
- (h) The word "City" shall mean the City of Cannelton, Indiana.
- (i) The word "County" shall mean the County of Perry, Indiana.



- (j) The word "State" shall mean the State of Indiana.
- (k) The word "Commission" shall mean the City of Cannelton Plan Commission.
- (l) The words "Council", "City Council", and "Common Council" shall refer to the City of Cannelton City Council.
- (m) The word "Board" shall mean the City of Cannelton Board of Zoning Appeals.
- (n) If there is any ambiguity between the text of this Title and any caption, illustration, or table, the text shall control. (Ord. 96-02, S1, March 25, 1996)

**7.02.030 Abbreviations.** The following abbreviations are used in this Title and are intended to have the following meanings:

ac	acre
AG	Agricultural (zoning district)
CR	Countryside Residential (zoning district)
DC	Downtown Commercial (zoning district)
DR	Downtown Residential (zoning district)
FAR	Floor Area Ratio
ft	foot
GC	General Commercial (zoning district)
HI	Heavy Industrial (zoning district)
ind	industrial
LI	Light Industrial (zoning district)
max	maximum
min	minimum
MR	Multiple-Family Residential (zoning district)
na	not applicable
NC	Neighborhood Commercial (zoning district)
nonres	nonresidential
res	residential
req	required
SR	Single-Family Residential (zoning district)
sf	square feet
sq	square
st	street
%	percent
#	number
#F	number of floors
(Ord. 96-02, S1, March 25, 1996)	

#### 7.02.040 Definitions.

- (a) The following words, terms and phrases, wherever they occur in this Title, shall have the meanings ascribed to them by this Section except where otherwise indicated. Words and terms not defined herein shall be defined as specified in the latest version of the Webster's New Collegiate Dictionary.
- (b) Definitions provided by this Section include:
  - (1) **Abutting:** Physically touching or having a common border or lot line with, or being separated from such common border by an alley or easement.
  - (2) **Access:** A means of vehicular approach, i.e., entry to or exit from a property, street or highway.
  - (3) **Access, secondary:** A means of vehicular or non-vehicular approach, entry to, or exit from a property from a source other than a public street or highway.
  - (4) **Accessory building, use or structure:** A building, use or structure subordinate in area, extent and purpose to, and serving, the principal building, use or structure on the same lot and customarily incidental thereto. See Section 7.04.040.
  - (5) **Addition:** Any walled and roofed expansion to the perimeter and/or height of a building connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.
  - (6) **Adjacent:** Abutting, contiguous or located directly across a right-of-way or private street.
  - (7) **Advisory Plan Commission:** A plan commission serving a single local government jurisdiction. The Cannelton Plan Commission is an Advisory Plan Commission.  
State Law Reference: Section 36-7-4-202, Indiana Code.
  - (8) **Agriculture:** The use of land for cultivation and/or husbandry and/or related services and processing customary thereto. See Section 7.04.030.
  - (9) **Alley:** A public right-of-way usually of reduced width which affords a secondary means of access to abutting property and not intended for general traffic circulation.

- (10) Apartment: One or more rooms comprising an independent self-contained dwelling unit, in a building containing two or more dwelling units or uses, which is rented and not commonly owned by its occupants. See Section 7.04.030 (b)(2) and see also commercial apartment.
- (11) Appeal: A means for obtaining review of a decision, determination, order, or failure to act pursuant to the terms of this Title as expressly authorized by the provisions of Section 7.09.060.
- (12) Attic: That part of a building which is immediately below and wholly or partly within the roof framing.
- (13) Average ground elevation: The average level of the finished surface of the ground adjacent to the exterior walls of a building or structure.
- (14) Basement: A portion of a building located partly underground, but having at least one-half of its floor to ceiling height above the average grade of the adjoining ground. In no instance shall the main floor of a single-story building be considered a basement.
- (15) Bed and breakfast establishment (land use): An operator occupied residence other than a hotel, motel, boarding house or food service establishment that provides sleeping accommodations to the public for a fee, has not more than fourteen (14) guest rooms, provides breakfast as part of the fee and provides sleeping accommodations for not more than thirty (30) consecutive days to a particular guest.  
State Law Reference: Section 16-41-31, Indiana Code.
- (16) Bedroom: A room in a residence marketed, designed, or likely to function primarily for sleeping, and separated from other rooms by a door.
- (17) Blanket variance: A variance which is automatically granted by a provision of this Title to reduce the creation of legal nonconforming developments. See Section 7.05.060.
- (18) Board of Zoning Appeals: The board established to hear appeals, variances, and special uses under this Title as authorized by state law. See Section 7.10.050.
- (19) Boarding house, lodging house, rooming house (land use): See Section 7.04.030 (b)(1).

- (20) Buildable area: That portion of a lot remaining after the minimum yard and open space requirements of this Title have been complied with.
- (21) Building: Any structure which is substantially enclosed by exterior walls, has a roof supported by columns or walls and is built, maintained, or intended for use for the shelter or enclosure of animals, persons, processes or property of any kind. The term is inclusive of any part thereof.
- (22) Building, principal: A building in which is conducted, or in which is intended to be conducted, the main or principal use of the lot on which it is located.
- (23) Building front: That exterior wall of a building which faces the front lot line of the lot.
- (24) Building height: The vertical distance from: (1) the average ground elevation or (2) the established grade, whichever is lower, to the top of the cornice of a flat roof, to the deck line of a mansard roof, to a point of the roof directly above the highest wall of a shed roof, to the uppermost point on a round or other arch type roof, to the mean height between eaves and the ridge of the highest gable or roof line on a gable, gambrel, pitched or hip roof.
- (25) Building line: A line on a lot, generally parallel to a lot line or street right-of-way line that passes through the point of the principal building nearest the front lot line. The building line relates to the actual setback of an existing building versus a required setback defined under “yard line” which may be closer to the front lot line than the actual building line.
- (26) Bulk (of a building): The combination of building height, size, and location on a lot. See Chapter 7.05.
- (27) Campground (land use): See Section 7.04.030(d)(3).
- (28) Caretaker’s residence: A commercial apartment which is used exclusively by either the owner, manager, or operator of a principal permitted use and which is located on the same parcel as the principal use.

- (29) Carport (land use): A roofed structure providing space for the parking or storage of motor vehicles and enclosed on not more than three (3) sides.
- (30) Cellar: A portion of a building located partly or wholly underground, having at least one-half of its floor to ceiling height below the average grade of the adjoining ground.
- (31) Child care center: See Section 7.04.030 (d)(4).  
State Law Reference: Section 12-7-2-28.4, Indiana Code.
- (32) Child care home: See Section 7.04.040(d).  
State Law Reference: Section 12-7-2-28.4, Indiana Code.
- (33) Commercial animal boarding (land use): See Section 7.04.030 (d)(1).
- (34) Commercial apartment (land use): See Section 7.04.040 (c).
- (35) Commercial vehicle: Any motor vehicle used for business or institutional purposes or having painted thereon or affixed thereto a sign identifying a business or institution or a principal product or service of a business or institution. Agricultural equipment used as part of a permitted agricultural principal use shall not be considered a commercial vehicle.
- (36) Communication tower (land use): See Section 7.04.030 (e)(1).
- (37) Community character: The impression which an area makes in regard to the type, intensity, density, quality, appearance, and age of development.
- (38) Composting operation (land use): See Section 7.04.030 (e)(2).
- (39) Comprehensive Plan: The Comprehensive Plan of the City of Cannelton, Indiana, adopted in 1995 and any subsequent amendments thereto.  
State Law Reference: Section 36-7-4-405, Indiana Code.
- (40) Condominium: Real estate subject to Indiana's Horizontal Property Law by the recordation of condominium instruments, in which undivided interests in the common areas and facilities are vested in the condominium unit owners.  
State Law Reference: Chapter 32-1-6, Indiana Code.
- (41) Contiguous: See abutting.

- (42) Cultivation (land use): See Section 7.04.030 (a)(2).
- (43) Day Care: See child care home or child care center.
- (44) Density, gross: The result of dividing the number of dwelling units located on a site by the gross site area.
- (45) Density, maximum gross: The maximum number of dwelling units permitted per acre of gross site area.
- (46) Developer: The legal or beneficial owner(s) of a lot or parcel of any land proposed for inclusion in a development, including an optionee or contract purchaser.
- (47) Development: The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any buildings; any use or change in use of any buildings or land; any extension of any use of land; or any clearing, grading, or other movement of land or water, below or above ground or water for which permission may be required pursuant to this Title.
- (48) Development site: One or more lots, plots, or parcels or combinations of contiguous lots, plots or parcels or portions thereof developed or to be developed as a single development or land use and containing one or more buildings and structures, commonly under single ownership or control at the time of construction.
- (49) Direct access: A condition of immediate physical connection generally for purposes of vehicular entry or exit resulting from a road or right-of-way abutting a property.
- (50) Drainage: The removal of surface water or groundwater from land by drains, grading, or other means. Drainage includes the control of runoff to minimize erosion and sedimentation during and after development, and the means necessary for water supply reservation or prevention or alleviation of flooding.
- (51) Duplex: See Section 7.04.030 (b)(4).
- (52) Dwelling: A structure or one or more portions thereof occupied or intended to be occupied exclusively for residence purpose or human habitation.

- (53) Dwelling, single-family detached: A dwelling designed for and occupied by not more than one family and having no roof, wall, or floor in common with any other dwelling unit and surrounded by open space on the same lot.
- (54) Dwelling, two-family: See Section 7.04.030 (b)(4).
- (55) Dwelling unit: A room or group of rooms, providing or intended to provide living quarters for not more than one (1) family with separate toilets and facilities for sleeping and cooking.
- (56) Easement: Authorization by a property owner for another party to use for a specified purpose any designated part of his property or any one or more of the property rights attached thereto.
- (57) Elevated Building: A non-basement building built to have its lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (post and piers), shear walls, or breakaway walls.
- (58) Environs (of the City of Cannelton): The area outside of the City limits in which the City of Cannelton exercises extraterritorial powers of zoning and/or land division review. See also Extraterritorial area.
- (59) Erosion: The detachment and movement of soil or rock fragments or the wearing away of the land surface by water, wind, ice, and/or gravity.
- (60) Extraterritorial area: The area outside of the City limits in which the City of Cannelton exercises extraterritorial powers of zoning and/or land division review. See also Environs.
- (61) Family: A group of individuals, not necessarily related, living together in a dwelling unit as a single nonprofit housekeeping unit, doing their cooking on the premises, in an intentionally structured relationship providing organization and long-term stability; as distinguished from a group occupying a boarding house, hotel, fraternity or similar living arrangement.  
Rationale: The term "family" is so defined so as to permit unrelated groups of individuals such as two widows or a group of disabled individuals to occupy dwelling units together so long as overcrowding is prevented.
- (62) Floor area, gross (for determining floor area ratio): The sum of the gross horizontal areas of the several floors of a building including penthouses, interior balconies,

mezzanines, basements and attached accessory buildings, fitting rooms, stairs, escalators, unenclosed porches, detached accessory buildings used as dead storage, heating and utility rooms, and indoor off-street parking or loading space. Measurements shall exclude exterior walls and include interior walls.

- (63) Floor area, net (for determining parking and loading requirements): The sum of the net horizontal areas of the several floors of a building including penthouses (excluding mechanical penthouses), interior balconies and mezzanines (excluding those and other common areas designed exclusively and permanently for pedestrian circulation), basements and attached accessory buildings (excluding those used for storage only), but excluding stairs, escalators, elevator shafts, unenclosed porches, detached accessory buildings, heating and utility and other mechanical equipment rooms, public restrooms, attic space having headroom less than seven (7) feet six (6) inches, indoor off-street parking and loading space, and entrance lobbies. Measurements shall exclude exterior walls and include interior walls.
- (64) Floor area ratio (FAR): The ratio calculated by dividing the gross floor area of all buildings on a site by the gross area of the site. See maximum floor area ratio.
- (65) Floor area ratio, maximum: The greatest amount of floor area permitted on a site or lot. See floor area ratio.
- (66) Floor plans, general: A graphic representation of the anticipated utilization of the floor area within a building or structure by use and dimensioned areas, but not necessarily as detailed as construction plans.
- (67) Floors, maximum number of: The greatest number of floors permitted in a residential structure as permitted in Table 2.
- (68) Garage, residential: A detached accessory building or portion of the principal building, including a carport, which is used primarily for storing passenger vehicles, trailers, or trucks of a rated capacity not in excess of four thousand five hundred (4,500) pounds owned and operated by the residents thereof.
- (69) Glare: The brightness of a light source which causes eye annoyance, discomfort, or loss in visual performance and visibility.



- (70) Gross site area: See site area, gross.
- (71) Height (of a structure): The vertical distance measured from the average ground elevation surrounding the structure to the highest point of the structure. See also building height.
- (72) Height, maximum: The height of the highest portion of any structure. See Section 7.05.040 for exclusions.
- (73) Holding zone: A zoning district designed to limit development potential until adequate public services and infrastructure are provided.
- (74) Hotel, motel, inn or motor court: A commercial facility offering transient lodging accommodations to the general public with or without additional services.
- (75) Home occupation (accessory land use): See Section 7.04.040 (f).
- (76) Husbandry (land use): See Section 7.04.030 (a)(3).
- (77) Indoor commercial entertainment (land use): See Section 7.04.030 (d)(7).
- (78) Infill development: Development located in areas which are for the most part developed already.
- (79) Institutional housing (land use): See Section 7.04.030 (b)(6).
- (80) Intensity: A term used to describe the potential impact of a development as measured by gross density for residential development and gross floor area ratio for nonresidential development.
- (81) Intensive agriculture (land use): See Section 7.04.030 (a)(4).
- (82) Land use: A description of how land is occupied or utilized.
- (83) Lot: A tract or parcel of land that:
  - a. is undivided by any street or private road;
  - b. is occupied by, or designed to be developed for one (1) building or principal use and is of sufficient size to meet the minimum zoning requirements for said building or use; and

- c. contains the accessory buildings or uses customarily incidental to such building, use or development, including such open spaces and yards as designed and arranged or required by this Title for such building, use or development.

See also lot of record, parcel and site.

- (84) Lot, corner: A lot situated at the junction of and abutting two or more intersecting streets, or a lot at the point of deflection in alignment of a continuous street, the interior angle of which does not exceed one hundred thirty-five (135) degrees.
- (85) Lot, interior: A lot other than a corner lot.
- (86) Lot, through: A lot which has a pair of opposite lot lines abutting two substantially parallel streets, or abutting two streets or two portions of a continuous curvilinear street that do not intersect at the boundaries of the lot.
- (87) Lot depth: The mean horizontal distance between the front lot line and the rear lot line of a lot.
- (88) Lot frontage: Lot width measured at the front lot line.
- (89) Lot line: The property line bounding a lot that divides it from another lot or a public or private street right-of-way. Lot lines extending into public rights-of-way shall be measured at the public right-of-way line for purposes of this Title.
- (90) Lot line, front: A lot line which abuts a public or private street right-of-way. In the case of a lot which abuts two or more streets, the lot line most closely parallel with the front door of the principal building, or where there is no building the lot line along which primary access to the site is obtained shall be the front lot line.
- (91) Lot line, rear: In the case of rectangular or most trapezoidal shaped lots, that lot line which is parallel to and most distant from the front lot line of the lot. In the case of an irregular, triangular, or gore-shaped lot, a line twenty (20) feet in length, entirely within the lot, parallel to and at the maximum possible distance from the front lot line shall be considered the rear lot line.
- (92) Lot line, side: Any boundary of a lot which is not a front lot line, a street side lot line, or a rear lot line.

- (93) Lot line, street side: Any lot line which abuts a public or private street right-of-way which is not the front lot line.
- (94) Lot of record: A lot that exists as shown or described on a plat or deed in the records of the City of Cannelton or Perry County and recorded in the office of the County Recorder.
- (95) Lot size, minimum: The minimum lot area permitted within the specified zoning district.
- (96) Lot width: The maximum horizontal distance between the side lot lines (and/or street side lot lines) of a lot, measured parallel to the front lot line at the depth of the required front yard. See minimum lot width.
- (97) Lot width, minimum: The smallest permissible lot width for the applicable zoning district.
- (98) Maintenance guarantee: A guarantee of facilities or work to either ensure the correction of any failures or any improvements required pursuant to this Title or to maintain same.
- (99) Manufactured home: A single-family dwelling unit, a minimum of nine hundred fifty (950) square feet in area; with pitched roofs with a minimum rise of 2/12; with conventional roofing and siding materials; with wheels, axles, and towing chassis removed; installed as a permanent residence on a permanent foundation of masonry construction with a permanent perimeter enclosure constructed in good, proper, and workmanlike manner; designed and built in a factory; and which bear a seal certifying that it was built in compliance with the federal Manufactured Housing Construction and Safety Standards law of 1974.  
State Law Reference: Section 36-7-4-1106, Indiana Code.
- (100) Master Plan: See Comprehensive plan.
- (101) Mobile home: A mobile home is any vehicle without motive power designed by the manufacturer or maker with hitch and undercarriage to permit the attachment of axles and wheels, and so designed to permit its being conveyed upon public streets and highways and so designed, constructed or reconstructed as to permit the vehicle to be temporarily used as a single family dwelling. Includes manufactured dwelling units not meeting the definition of a manufactured home in (99) above.

- (102) Mobile home park: See Section 7.04.030 (b)(8).
- (103) Motor vehicle: Any passenger vehicle, automobile, motorcycle, recreational vehicle, truck, trailer truck or semi-trailer which is propelled or drawn by mechanical power.
- (104) Nonconforming building, lot, or structure: Any building, lot of record or structure which is lawfully existing under provisions or regulations prior to the effective date of this Title, which does not comply with all the applicable regulations of this Title.
- (105) Nonconforming use: An active and actual use of land, buildings or structures lawfully existing prior to the effective date of this Title which has continued as the same use to the present and which does not comply with all the applicable regulations of the Title.
- (106) Noxious matter or materials: Material capable of causing injury to living organisms by chemical reaction, or is capable of causing detrimental effects on the physical or economic well-being of individuals.
- (107) Official zoning map: The map or maps adopted as part of the City of Cannelton zoning ordinance, and amended from time to time, upon which the zoning districts are delineated.
- (108) On-site: Located on the lot in question.
- (109) Outdoor assembly (land use): See Section 7.04.050 (c).
- (110) Outdoor commercial entertainment (land use): See Section 7.04.030 (d)(11).
- (111) Overlay zoning district: A zoning district which imposes uniform restrictions on all properties within its area which are in addition to the restrictions specific to the underlying standard zoning districts, as well as the general restrictions of this Title. (e.g. floodplain overlay zoning district, historic preservation overlay zoning district).
- (112) Owner: The person or persons having the right of legal title to a lot or parcel of land.
- (113) Parcel: A contiguous lot or tract of land owned and recorded as a property under single ownership or control by the same persons or by a single entity.

- (114) Performance guarantee: A financial guarantee to ensure that all improvements, facilities, or work required by this Title will be completed in compliance with the Title, regulations and the approved plans and specifications of a development.
- (115) Performance standards: Criterion established to control and limit the impacts generated by, or inherent in, uses of land or buildings.
- (116) Plan Commission: The Plan Commission of the City of Cannelton.
- (117) Principal building: See Building, principal.
- (118) Principal use: See Use, principal.
- (119) Public improvement: Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for the public needs such as: streets, roads, alleys or pedestrian walks or paths, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, and public utility and energy services.
- (120) Public sewer: The City of Cannelton sewer system and other forms of sewer systems approved by the State and maintained by a public agency authorized to operate such systems.
- (121) Scale (of development): A term used to describe the relationship of a particular project or development in terms of its size, height, bulk, intensity, and aesthetics to its surroundings.
- (122) Septic disposal system, individual: See Section 7.04.040 (g).
- (123) Setback, building: The distance from a front, street side, side, or rear property line to a structure. See minimum building setback.
- (124) Setback, minimum building: The shortest distance permitted from a front, street side, side, or rear property line to a structure.
- (125) Setback, parking: The distance from a front, street side, side, or rear property line to any paved or hard surface. See minimum parking setback.

- (126) Setback, minimum parking: The shortest distance permitted from a front, street side, side, or rear property line to any paved or hard surface.
- (127) Sexually-oriented use (land use): See Section 7.04.030 (d)(14).
- (128) Sign: Any object, device, display, or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.
- (129) Site: See Development site.
- (130) Site area, gross: The total area contained within the property boundaries or lot lines of a site (used for calculating gross density).
- (131) Skylight: A window or other paned area located on the ceiling or roof of a structure.
- (132) Solid fence: Any fence which cannot be seen through. Such fences include basketweave, stockade, plank, and similar fences.
- (133) Special Use: A land use which because of its nature must be reviewed by the Board of Zoning Appeals to determine that there is a showing that such use is appropriate and compatible and may be developed per a set of requirements specifically applying to that use at the proposed location. See Section 7.09.040 for applicable procedures.
- (134) Start of construction: The date the building permit is issued, provided the actual start of activity was within one hundred eighty (180) days of the permit date. The actual start of activity means either the first placement of permanent construction of a structure on the site such as the pouring of a slab or footings, the installation of piles, or the construction of columns. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basements, footings, piers, or foundations; nor does it include the erection of temporary forms; nor does it include the installation on the property of

accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

- (135) Story: That portion of a building included between the surface of any floor and the surface of the floor next above; or if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story and a cellar shall not be counted as a story.
- (136) Street: Any public or private way dedicated or permanently open to vehicular and/or pedestrian use of a width to accommodate such movements; includes the land between the street lines, whether improved or unimproved.
- (137) Street line: See Lot line, front.
- (138) Strip development: A pattern of land uses generally typified by contiguous nonresidential and/or multiple-family development located along one or both sides of a street which is generally only one lot deep and which is characterized by many curb cuts and minimal open space.
- (139) Structure: A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. All buildings are structures.
- (140) Swale: Commonly a linear depression in the ground that channels runoff.
- (141) Temporary use: A land use which is present on a property for a limited and specified period of time.
- (142) Thoroughfare: A public way or place that includes the entire right-of-way for public use and all surface and subsurface improvements on it such as sidewalks, curbs, shoulders, and utility lines and mains.
- (143) Thoroughfare plan: An element of a community's comprehensive plan used to determine locations for new, extended, widened or narrowed thoroughfares.  
State Law Reference: Section 36-7-4-506, Indiana Code.
- (144) Use: The purpose or activity for which land or any building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

- (145) Use, Principal: The primary or predominant use of land, a building or a structure.
- (146) Variance: Permission by the Board of Zoning Appeals to depart from the literal requirements of this Title granted pursuant to Section 7.09.050.
- (147) Working days: Monday, Tuesday, Wednesday, Thursday and Friday; excluding holidays granted by the City of Cannelton to its department heads.
- (148) Yard: A required open space on the same lot as the building(s) it serves, which is unoccupied and unobstructed from the ground upward, except as expressly permitted by this Title and which is bounded by applicable lot lines and yard lines.
- (149) Yard, front: A yard extending along the full width of the front lot line bounded by the front lot line, side/street side lot lines (or rear lot line(s) in the case of a lot without side lot line(s)) and the front yard line.
- (150) Yard, rear: A yard extending along the full width of the rear lot line between and to the side lot lines (and/or the front or street side yard lines in the case of a corner lot) and the rear yard line (includes any area leftover from the artificial creation of a rear lot line in the case of an irregular shaped lot).
- (151) Yard, side: A yard extending along the side lot line between the front and rear yard lines, and the side yard line.
- (152) Yard, street side: A side yard which abuts a street which, unlike a typical side yard, extends to the rear lot line rather than the rear yard line.
- (153) Yard Line: A line on the lot that is parallel to the lot line along which the applicable yard extends and located at a depth or width of the applicable yard specified in the yard regulations for the district in which such lot is located.
- (154) Zoning Administrator: The person(s) appointed or employed by the City and charged with the application and interpretation of this Title.
- (155) Zoning map: See Official zoning map. (Ord. 96-02, S1, March 25, 1996)



## Chapter 7.03

### ESTABLISHMENT OF ZONING DISTRICTS

#### Sections:

7.03.010	Purpose
7.03.020	Standard Zoning Districts
7.03.030	Overlay Zoning Districts
7.03.040	Map of Zoning Districts
7.03.050	New or Annexed Land
7.03.060	Zoning District Boundaries
7.03.070	Description of Zoning Districts

**7.03.010 Purpose.** The area located within the jurisdiction of this Title is hereby divided into zoning districts of such number and community character as are necessary to achieve compatibility of land uses within each district, to implement the officially adopted City of Cannelton Comprehensive Plan, and to achieve the purposes of this Title (see Section 7.01.050). (Ord. 96-02, S1, March 25, 1996)

**7.03.020 Standard Zoning Districts.** The City of Cannelton and its extraterritorial jurisdiction area are hereby divided into the following standard zoning districts which primarily regulate the use of land and its density and intensity, shown below under three general land use categories:

#### Agricultural Districts

AG - Agricultural

#### Residential Districts

CR - Countryside Residential

SR - Single-Family Residential

DR - Downtown Residential

MR - Multiple-Family Residential

#### Non-Residential Districts

NC - Neighborhood Commercial

DC - Downtown Commercial

GC - General Commercial

LI - Light Industrial

HI - Heavy Industrial

(Ord. 96-02, S1, March 25, 1996)

**7.03.030 Overlay Zoning Districts.** For the purposes of this Title, there are hereby established overlay zoning districts. Overlay zoning district impose additional uniform restrictions on all properties within their boundaries which

are in addition to or may supersede those of the underlying standard zoning district. Overlay zoning districts which may impact lands under the jurisdiction of this Title include:

FP - Floodplain District  
HP - Historic Preservation District  
(Ord. 96-02, S1, March 25, 1996)

**7.03.040 Map of Zoning Districts.** The standard zoning districts and overlay zoning districts are shown on the Official Zoning Map of the City of Cannelton, which is hereby made part of this Title. (Ord. 96-02, S1, March 25, 1996)

**7.03.050 New or Annexed Land.** Any land outside the environs of the City of Cannelton in excess of five (5) acres in area, hereafter annexed to the City shall automatically, upon annexation be classified within the AG-Agricultural District, and if less than five (5) acres, shall be classified within the SR - Single-Family Residential District and be subject to all standards and regulations applicable to lands in such district until such land is later zoned in a manner provided by law; provided that in the event the owner of property to be annexed desires another zoning district classification, in harmony with density and land use designations shown for said property on the Comprehensive Plan, the owner may petition for said zoning classification. (Ord. 96-02, S1, March 25, 1996)

**7.03.060 Zoning District Boundaries.** The following rules shall be used to determine the precise location of any zoning district boundary shown on the Official Zoning Map of the City of Cannelton:

- (a) Zoning district boundaries shown as following or approximately following the limits of any City, Town or County boundary shall be construed as following such limits.
- (b) Zoning district boundaries shown as following or approximately following streets or railroad lines, shall be construed as following the centerline of such streets or railroad lines.
- (c) Zoning district boundaries shown as following or approximately following section lines, platted lot lines or other property lines on the City or County plat or tax parcel maps shall be construed as following such lines.
- (d) Zoning district boundaries shown as following or approximately following the centerlines of streams, rivers, or other continuously flowing watercourses shall be construed as following the channel centerlines of such watercourses, and in the event of a natural change in the location of such streams, rivers, or watercourses, the zoning district boundary shall be construed as moving with the channel centerline.

- (e) Zoning district boundaries shown as following or approximately following ridgelines or forest or woodland borders, or similar natural features shall be construed as following such lines.
- (f) Zoning district boundaries shown as separated from any of the features listed in (a) through (e) above, shall be construed to be at such distance therefrom as are shown in the Official Zoning Map.
- (g) Where any uncertainty exists as to the exact location of a zoning district boundary line, as shown on the Official Zoning Map, the location of the line shall be determined by the Zoning Administrator. (Ord. 96-02, S1, March 25, 1996)

#### **7.03.070 Description of Zoning Districts.**

- (a) Agricultural Districts

- AG - Agricultural

- This district is intended to permit development solely of a rural nature to maintain the rural community character and environment or to serve as a “holding zone” for larger tracts of land annexed without a petition for rezoning. Very low density residential development is permitted on lots of one (1) acre or more, and agricultural and agricultural related uses on tracts of five (5) acres or greater. This district shall allow such residential development at a density of .05 or one unit per twenty (20) acres. This would allow small tracts of agricultural land at forty (40) acres to have a primary residence and an additional residence for another family member on the same site. These densities are established to ensure that agricultural uses are encouraged and sustained by avoiding potential conflicts with neighboring residences. These densities also ensure that areas do not develop at more intense densities where urban services such as water and sewer should be provided. Higher densities should occur only in incorporated areas to minimize the overall costs of providing these and related services to scattered residential development.

- (b) Residential Districts

- (1) CR - Countryside Residential

- This district is intended to permit development which has a very low density, countryside community character. This district is intended to allow for single-family development at densities higher than the agricultural district yet still be located in unincorporated areas. Lot

sizes of at least one (1) acre are required to support septic systems. Such areas may be zoned Countryside Residential only upon execution of a pre-annexation agreement with the City for how the area which is being developed at non-rural densities will be served with urban services in the future upon annexation.

(2) SR - Single-Family Residential

This district is intended to permit single-family and duplex development at a moderate density characteristic of similar older small communities. This district is intended to be the primary residential district in the City and for future subdivision development. The standards for this district are intended to preserve and protect the small town residential character of this district.

(3) DR - Downtown Residential

This district is intended to permit single-family and duplex development at slightly higher densities in and adjoining the downtown historic preservation district. This residential district is intended to preserve the residential character of the older neighborhoods downtown while supporting the higher densities of the area due to existing small lot sizes. The small lot sizes support the goal of providing affordable housing and the goal of maintaining the character of the historic preservation district.

(4) MR - Multiple-Family Residential

This district is intended to permit buildings containing three or more dwellings units on lots providing common open space use for the residents. This district is intended to serve existing multiple-family buildings near the downtown and to provide areas for new multiple-family buildings on larger tracts of land to meet the varied housing needs of the City's residents. This district is intended to serve as a transitional zone, that is, generally located between lower density residential areas and more intense commercial or industrial areas.

(c) Non-Residential Districts

(1) NC - Neighborhood Commercial

This district is intended to permit small scale commercial development which is compatible with the surrounding neighborhoods and which provides convenience goods

and services to the nearby residents. The district is characterized by low floor area ratios and limited commercial uses primarily of an indoor nature to ensure the development is compatible with surrounding residential areas and densities.

(2) DC - Downtown Commercial

This district is intended to preserve the character of the downtown area and support its revitalization through providing a cohesive commercial area for pedestrian activity. Densities are high and lot sizes small to maintain the historic character of the area. Uses are restricted to non-residential uses on the first floor to promote the district's cohesiveness. Residential uses are encouraged on the second floors to both provide affordable housing and provide activity in the district at all times.

(3) GC - General Commercial

This district is intended to provide for the location of more intense commercial uses with outdoor activity generally located along major transportation arterials. This district also allows residential uses in existing structures used or previously designed for residential use. The existing mixed-use nature of this district is to gradually be replaced over time with a more cohesive commercial district to prevent the incompatibility between the residential and commercial uses and to aid in maintaining and improving property values in the area. As several residential structures exist in the district, it is the intent to allow such uses to as permitted uses, but to prohibit the addition of more residential structures in the future not formerly designed for residential use.

(4) LI - Light Industrial

This district is intended to provide an industrial area for limited industrial uses at low intensities. The light industrial areas are characterized by uses which do not create noise, odors, vibration or similar disturbances and which do not typically store any materials in the open on the lot.

(5) HI - Heavy Industrial

This district is intended to provide an industrial area for generally more intense industrial uses at higher floor area

ratios. Uses are allowed in this district which would not be permitted in any other district due to their potential for creating nuisances for adjoining properties. Outdoor storage is permitted in the heavy industrial zoning district.

(d) Overlay Zoning Districts

(1) Floodplain District

This district is intended to guide development in flood hazard areas identified on the Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, dated July 18, 1983. Uses are restricted so that development does not create a damaging or potentially damaging increase in flood heights or velocity or threat to public health and safety. The district's purpose is to reduce the potential for loss of life and property, reduce the potential for health and safety hazards, and reduce the potential for extraordinary public expenditures for flood protection and relief.

(2) Historic Preservation District

The historic preservation district is intended to preserve and protect historic or architecturally worthy buildings, structures, sites, monuments, streetscapes, squares, and neighborhoods. The district may provide regulations regarding development, redevelopment, rehabilitation, and preservation activities that affect the exterior visual quality of the district. (Ord. 96-02, S1, March 25, 1996)

## Chapter 7.04

### LAND USE REGULATIONS

#### Sections:

7.04.010	Purpose
7.04.020	Interpretation of Land Use Table
7.04.030	Detailed Land Use Descriptions and Regulations
7.04.040	Accessory Uses, Buildings, and Structures
7.04.050	Temporary Uses

**7.04.010 Purpose.** The purpose of this Chapter is to indicate which land uses may locate in each zoning district and under what requirements; and which land uses may not locate therein. There are uses that may locate in a district but only after receiving approval of a Special Use permit to do so. In addition to these principal permitted and special uses, there are also accessory uses and temporary uses for which regulations are outlined in this Chapter. (Ord. 96-02, S1, March 25, 1996)

#### **7.04.020 Interpretation of Land Use Table.**

- (a) Land Uses Permitted by Right.  
Land uses that are listed in Table 1 with a "P" are permitted by right per various requirements of this Title.
- (b) Land Uses Permitted as a Special Use.  
Land uses that are listed in Table 1 with an "S" are Special Uses requiring application to and review by the Board of Zoning Appeals per Section 7.09.040. See the detailed land use regulations in Section 7.04.030 for each individual land use or category of land uses. Each application for, and instance of, a Special Use shall be considered a unique situation and shall not be construed as precedence for similar requests.
- (c) Land Uses Permitted as an Accessory Use.  
Accessory land uses may be permitted by right or as Special Uses. See the detailed land use regulations pertaining to accessory uses in Section 7.04.040.
- (d) Land Uses Permitted as a Temporary Use.  
Temporary uses are considered uses permitted by right or as Special Uses and shall be required to meet the requirements of Section 7.04.050 for the individual temporary use.

**TABLE 1:**  
**LAND USES PERMITTED IN ZONING DISTRICTS**

Page 1 of 3

AG    Agricultural  
CR    Countryside Residential  
SR    Single-Family Residential  
DR    Downtown Residential

MR    Multiple-Family Residential  
NC    Neighborhood Commercial  
DC    Downtown Commercial  
GC    General Commercial

LI    Light Industrial  
HI    Heavy Industrial  
P    PERMITTED USE  
S    SPECIAL USE

<i>Principal Land Uses:</i>	<i>Zoning District:</i>									
	AG	CR	SR	DR	MR	NC	DC	GC	LI	HI
<b>RESIDENTIAL USES</b>										
Boarding House	S			P	P		P	P		
Dwelling, Multiple-Family				S	P			S		
Dwelling, Single-Family	P	P	P	P	P			S		
Dwelling, Two-Family		S	P	P	P			S		
Group Housing	S	S	S	S	P			S		
Institutional Housing				S	S	S	S	S		
Manufactured Home	P	P	P	P	P			S		
Mobile Home Park					S					
<b>AGRICULTURAL USES</b>										
Agricultural Services	P							S		
Cultivation and Husbandry	P									
Intensive Agriculture	S									



**TABLE 1:**  
**LAND USES PERMITTED IN ZONING DISTRICTS**  
Page 2 of 3

<i>Principal Land Uses:</i>	<i>Zoning District:</i>									
	AG	CR	SR	DR	MR	NC	DC	GC	LI	HI
<b>INSTITUTIONAL/PUBLIC USES</b>										
Institutional - Non-Residential	S	S	S	S	S	P	P	P		
Outdoor Public Recreational	P	P	P	P	P	P	P	P	P	P
Public Services - General	P	P	P	P	P	P	P	P	P	P
Public Services - Intense	S	S	S	S	S	S	S	S	S	S
<b>COMMERCIAL USES</b>										
Animal Boarding	P							S		
Bed and Breakfast	S	S	S	S	P	P	P	P		
Campground	S									
Child care centers	S	S	S	S	P	P	P	P		
Funeral Homes and Parlors	S	S	S	S	P	P	P	P		
Hotels and Motels						S	P	P		
Indoor Commercial Entertainment						S	P	P		
Indoor Retail Sales and Service						P	P	P		
Mini-Warehouses	S					S	S	P	P	P
Office					P	P	P	P	P	
Outdoor Commercial Entertainment	S							S		
Outdoor Retail Sales and Service							S	S		
Personal or Professional Service					P	P	P			
Sexually-Oriented Land Uses										S
Health Services	S	S	S	S	S	S	S	S	S	S

**TABLE 1:**  
**LAND USES PERMITTED IN ZONING DISTRICTS**  
Page 3 of 3

<i>Principal Land Uses:</i>	<i>Zoning District:</i>									
	AG	CR	SR	DR	MR	NC	DC	GC	LI	HI
<b>INDUSTRIAL USES</b>										
Communication Tower	S								S	S
Composting Operations									S	S
Heavy Industrial										P
Junk, Salvage, or Auto Wrecking Yard									S	
Light Industrial									P	P
Mining, Extraction, and Related Uses		S							S	S
Motor Freight Terminals									S	S
Waste Disposal Facilities									S	

<i>Accessory Land Uses:</i>	AG	CR	SR	DR	MR	NC	DC	GC	LI	HI
Child Care Home	P	P	P	P	P	P	P	P	P	P
Commercial Apartment	S					S	P	P		
Drive-Up Establishment						S	S	S		
Home Occupation	P	P	P	P	P	P	P	P	P	P
Individual Septic Disposal System	P	S	S	S	S	S	S	S	S	S
Agricultural Labor Camp	S								S	S
Outdoor Display						P	P	P		
Outdoor Storage (see 7.04.040(i))										

<i>Temporary Land Uses:</i>	AG	CR	SR	DR	MR	NC	DC	GC	LI	HI
Mobile Home	S				S					
Outdoor Assembly	P	S	S	S	S	S	P	P	P	P
Outdoor Display and Sales	P					P	P	P	P	P

(e) Blank Spaces on the Chart

Land uses for which a blank space is shown for a specific zoning district are not permitted in that district, except as legal nonconforming uses (see Chapter 7.07).

(f) Permitted Uses Subject to All Provisions of this Title

Although a land use may be noted as permitted by right, permitted as a Special Use, or permitted as an accessory or temporary use, it does not follow that such land use is permitted or permissible on every parcel in such district. No land use is permitted or permissible on a parcel unless it can be located thereon in full compliance with all of the standards and regulations of this Title which are applicable to the specific land uses in question, or unless an appropriate variance has been granted. (Ord. 99-5, May 24, 1999) (Ord. 96-02, S1, March 25, 1996)

**7.04.030 Detailed Land Use Descriptions and Regulations.** The land use categories used by this Title are defined in this Section. Land uses which are not listed in this Title are not necessarily excluded from locating within any given zoning district. Section 7.09.070 empowers the Zoning Administrator to make interpretations of specific land use proposals so as to note them as unlisted permitted uses or unlisted Special Uses.

(a) Agricultural Land Uses

(1) Agricultural Services

Agricultural service land uses include all operations pertaining to the sale, handling, transport, packaging, storage, or disposal of agricultural equipment, products, by-products, or materials primarily used by agricultural operations. Examples of such land uses include agricultural implement sales, storage, or repair operations; feed and seed stores; agricultural chemical dealers and/or storage facilities; animal feed storage facilities; commercial dairies; food processing facilities; canning and other packaging facilities; and agricultural waste disposal facilities (except commercial composting uses).

Permitted by Right in the following districts: AG.

Special Use in the following districts: GC.

(2) Cultivation

Cultivation land uses include all operations primarily oriented to the on-site, outdoor raising of plants. This land use includes trees which are raised as a crop to be replaced

with more trees after harvesting such as a nursery or Christmas tree farm. Cultivation also includes the raising of plants for the consumption of farm animals.

Permitted by Right in the following districts: AG.

Special Use in the following districts: Not applicable.

(3) Husbandry

Husbandry land uses include all operations primarily oriented to the on-site raising and/or use of animals at an intensity equal to or less than the numbers in the livestock chart below, includes apiaries.

Permitted by Right in the following districts: AG

Special Use in the following districts: Not applicable.

*The livestock chart* is a means for defining a husbandry or intensive agricultural use. The measures relate to the carrying capacity of one acre of land and is related to the amount of feed various species consume, and the amount of waste they produce. The following table notes common farm species and their permitted numbers per acre.

<i>Type of Livestock:</i>	<i>Number of Animals per Acre:</i>
Horse (2 years or older)	1
Colt (under 2 years)	2
Cattle (2 years or older)	1
Cattle (1 to 2 years)	2
Calves (under 1 year)	4
Brood Sow or Boar	2.5
Hogs (up to 220 pounds)	5
Sheep	7
Lambs	14
Chickens	200
Other Poultry	200

*Source: Stockman's Handbook*

(4) Intensive Agriculture

Intensive agricultural land uses include all operations primarily oriented to the on-site raising and/or use of animals at an intensity exceeding the numbers in the livestock chart above and/or agricultural activities requiring large investments in structures. Examples of such land uses include feed lots, hog farms, poultry operations, fish farms, and commercial greenhouse operations.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: AG.

(b) Residential Uses

(1) Boarding, Lodging, and Rooming Houses

Boarding, lodging and rooming houses are dwellings with on-site owners or operators renting rooms with or without meals provided which do not contain private bathroom facilities (with the exception of approved bed and breakfasts operations). See also group housing and hotels.

Permitted by Right in the following districts: DR, MR, DC, GC.

Special Use in the following districts: AG.

State Law Reference: Chapters 16-41-29 to 32, Indiana Code.

(2) Dwelling, Multiple-Family

Multiple-family dwellings are single buildings containing three or more dwelling units as the principal use of the property. Examples include apartment buildings and attached single-family dwellings such as townhouses and condominiums. See also Commercial Apartments and Agricultural labor camps as accessory uses. See Section 7.07.010 (f) for special exceptions for existing buildings designed for or previously used for residential purposes in the GC - General Commercial District.

Permitted by Right in the following districts: MR.

Special Use in the following districts: DR, GC.

Special Use regulations:

- A. Multiple-family dwellings shall be located in transitional areas of the Downtown Residential and General Commercial districts. In the DR zoning district such uses should be located on the fringes of the district near non-residential or other multiple-family uses, rather than in a cohesive single-family residential area. In the GC zoning district, such uses should be located near existing residential uses rather than in a cohesive commercial area.
- B. Two or more multiple-family buildings may be permitted on a single tract of land held in common ownership and control with common areas, provided:
  - i. The development shall be reviewed as a Special Use by the Board of Zoning Appeals.
  - ii. The development shall be designed so that it is compatible with surrounding land uses.

- iii. The required densities or floor area ratios shall be adhered to for the site as a whole.
- iv. A minimum of fifty (50) percent of the site shall be devoted to open space other than buildings and paved or hard surfaces.
- v. All buildings and structures shall comply with required setbacks from property lines.
- vi. All buildings shall be located a minimum of twenty (20) feet from one another.
- vii. Parking shall be distributed in a manner so that it is easily accessible from all buildings.

(3) Dwelling, Single-Family

Single-family dwellings are dwellings designed for and occupied by not more than one (1) family. Single-family dwellings when referred to in this Title include only detached single-family dwellings. Manufactured homes are considered single-family dwellings. See Section 7.07.010 (f) for special exceptions for existing buildings designed for or previously used for residential purposes in the GC - General Commercial District.

Permitted by Right in the following districts: AG, CR, SR, DR, MR.

Special Use in the following districts: GC.

Special Use regulations:

Single-family dwellings shall be located in transitional areas of the General Commercial district. In the GC zoning district, such uses should be located near existing residential uses rather than in a cohesive commercial area.

(4) Dwelling, Two-Family

Two-family dwellings are detached buildings containing two dwelling units in a duplex arrangement with units side by side, or in a two-flat arrangement with units upper and lower, or in rare instances due to building design—combinations thereof.

Permitted by Right in the following districts: SR, DR, MR.

Special Use in the following districts: CR, GC.

Special Use regulations:

Two-family dwellings shall be located in transitional areas of the General Commercial district. In the GC zoning district,

such uses should be located near existing residential uses rather than in a cohesive commercial area.

(5) Group Housing

Group housing is the use of any residential structure in which care is provided in a supervised living program on a twenty-four (24) hour basis or temporarily in the case of shelter care for not more than ten (10) children nor more than eight (8) adults in accordance with state regulated care facilities in home settings. Community residential facilities for the mentally ill and developmentally disabled, adult care homes, group homes, shelters for domestic violence, and shelter care facilities for children are group housing. See also child care homes and institutional housing.

Permitted by Right in the following districts: AG, CR, SR, DR, MR.

Special Use in the following districts: GC.

State Law Reference: Title 12, Human Services, Indiana Code.

(6) Institutional Housing

Institutional housing is housing of individuals in connection with an established institution such as convents, monasteries, dormitories, fraternities, and sororities, and the housing and care of individuals in care facilities in an institutional rather than home setting on a twenty-four (24) hour basis such as nursing homes, community mental health centers, or developmental disability centers for nine (9) or more adults, extended care facilities, and private psychiatric institutions. See also group housing for home settings, and institutional non-residential uses for hospitals.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: DR, MR, NC, DC, GC.

State Law Reference: Title 12 and 16, Human Services and Health, Indiana Code.

(7) Manufactured Home

Manufactured homes are single-family dwelling units; a minimum of nine hundred fifty (950) square feet in area; with pitched roofs with a minimum rise of 2/12; with conventional roofing and siding materials; with wheels, axles, and towing chassis removed; designed and built in a factory; which bear a seal certifying that it was built in

compliance with the federal Manufactured Housing Construction and Safety Standards law of 1974 and which is installed as a permanent residence on a permanent foundation of masonry construction with a permanent perimeter enclosure constructed in good, proper, and workmanlike manner.

Permitted by Right in the following districts: AG, CR, SR, DR, MR.

Special Use in the following districts: GC.

State Law Reference: Section 36-7-4-1106, Indiana Code.

(8) Mobile Home Park

A mobile home park is a land use regulated by the State of Indiana as a mobile home park and is an area of land on which at least five (5) mobile homes are harbored on temporary supports for the purpose of being occupied as residences. See also mobile home under temporary land uses and manufactured home.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: MR.

Special Use regulations:

Mobile home parks as a condition of approval of the Special Use shall comply with the applicable requirements of Chapter 16-41-27 Health, Sanitation and Safety: Mobile Homes of the Indiana Code.

State Law Reference: Chapter 16-41-27, Indiana Code.

(c) Institutional/Public Uses

(1) Institutional Non-Residential

Institutional land uses are generally public, quasi-public, and nonprofit uses or private uses commonly operated by public entities, and include cemeteries; public and private schools; churches; nonprofit clubs, civic, and fraternal organizations; community centers; indoor swimming pools; museums; libraries; public gymnasiums; public auditoriums; hospitals and similar land uses. See indoor commercial entertainment uses for private indoor recreational uses and personal and professional services for medical centers.

Permitted by Right in the following districts: NC, DC, GC.

Special Use in the following districts: AG, CR, SR, DR, MR.

(2) Outdoor Public Recreational



Outdoor public recreational land uses include all recreational land uses located on public property which involve passive or active recreational activities. Such land uses include playcourts (such as ball diamonds, football fields, and soccer fields), tot lots, outdoor swimming pools, swimming beach areas, hiking trails, bike trails, picnic areas, nature areas, fishing areas, open grassed areas, fitness courses, public golf courses, and similar land uses. See institutional non-residential land uses for indoor public recreational land uses and see outdoor commercial entertainment for outdoor private recreational land uses. Permitted by Right in the following districts: All Districts. Special Use in the following districts: Not applicable.

(3) Public Services - General

General public service land uses are those operated by a governmental agency or jurisdiction or by a public utility with most of the activity found indoors and include fire and police stations, public garages and parking lots, post offices, public works garages, radio and television broadcasting stations, railroad stations, telephone relay stations and water towers. See also intense public services outdoor public recreational land uses, and communication tower. Permitted by Right in the following districts: All Districts. Special Use in the following districts: Not applicable.

(4) Public Services - Intense

Intense public service land uses are those land uses operated by a governmental agency or jurisdiction or by a public utility with most of the activity occurring outdoors and include airports; heliports; bus terminals; public works storage yards; radio and television towers; sewage treatment facilities; telephone exchange; switching and transmitting facilities; utility substations; utility yards; and water treatment facilities. See also general public services, outdoor public recreational land uses, and communication tower. Permitted by Right in the following districts: Not applicable. Special Use in the following districts: All Districts

(d) Commercial Land Uses

(1) Animal Boarding

Animal pounds, shelters and kennels are commercial animal boarding facilities which provide short-term and/or long-term boarding for animals. Examples of these land uses include commercial kennels and commercial stables. Exercise yards, fields, training areas, and trails associated with such land uses are considered accessory to such land uses and do not require consideration as a separate principal use.

Permitted by Right in the following districts: AG.

Special Use in the following districts: GC.

(2) Bed and Breakfast Establishment

A bed and breakfast establishment is an operator occupied residence other than a hotel, motel, boarding house or food service establishment that provides sleeping accommodations to the public for a fee, has not more than fourteen (14) guest rooms, provides breakfast as part of the fee and provides sleeping accommodations for not more than thirty (30) consecutive days to a particular guest.

Permitted by Right in the following districts: MR, NC, DC, GC.

Special Use in the following districts: AG, CR, SR, DR.

Special use regulations:

Bed and breakfast establishments in agricultural or residential areas should be located on the perimeter of such areas, preferably along main traffic routes rather than internally located in an established or proposed subdivision on a local residential street. Bed and Breakfast uses may erect one (1) sign up to ten (10) square feet in area.

State Law Reference: Section 16-41-31, Indiana Code.

(3) Campground

Campgrounds include any facilities designed for overnight accommodation of persons in tents, travel trailers, or other mobile or portable shelters or vehicles. See also mobile home park.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: AG.

(4) Child Care Center (Nine or More Children)

A child care center is a building where at least seventeen (17) children receive child care from a qualified provider while unattended by a parent, legal guardian or custodian, for regular compensation, and for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays, and holidays. Examples of such land uses include day care centers and nursery schools. Such land uses shall not be located within a dwelling unit. Such land uses may be operated on a for profit or a not for profit basis. Such land uses may be operated in conjunction with another principal land use on the same parcel, such as a church, school, business, or civic organization. In such instances, child care centers are not considered accessory uses and therefore require review as a separate land use.

Permitted by Right in the following districts: MR, NC, DC, GC.

Special Use in the following districts: AG, CR, SR, DR.

State Law Reference: Section 12-17.5-4, Indiana Code.

(5) Funeral Homes and Parlors

Funeral homes and parlors are buildings used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

Permitted by Right in the following districts: MR, NC, DC, GC.

Special Use in the following districts: AG, CR, SR, DR.

Special Use regulations: Adequate parking and stacking spaces for vehicles lined up for processions must be provided to avoid any negative impacts on surrounding residential land uses.

(6) Hotels and Motels

Commercial indoor lodging facilities such as hotels, motels, inns and motor courts include land uses which provide overnight housing in individual rooms or suites of rooms, each room or suite having a private bathroom. Such land uses may provide in-room or in-suite kitchens, and may also provide indoor recreational facilities for the exclusive use of their customers. Restaurant, arcades, fitness centers, and other on-site facilities available to non-lodgers are not

considered accessory uses and therefore require review as a separate land use.

Permitted by Right in the following districts: DC, GC.

Special Use in the following districts: NC.

(7) Indoor Commercial Entertainment

Indoor commercial entertainment land uses include all land uses which provide entertainment services entirely within an enclosed building. Such activities often have operating hours which extend significantly later than most other commercial land uses. Examples of such land uses include restaurants, taverns, theaters, health or fitness centers, all forms of training studios (dance, art, martial arts, etc.), bowling alleys, dance halls, arcades, roller rinks, and pool halls.

Permitted by Right in the following districts: DC, GC.

Special Use in the following districts: NC.

(8) Indoor Retail Sales and Service

Indoor retail sales and service land uses include all land uses which conduct or display sales or rental merchandise or equipment, or conduct non-personal or non-professional services, entirely within an enclosed building. This includes self-service facilities such as coin-operated laundromats. All general retail uses, services uses, indoor maintenance and repair uses, and uses such as art galleries, veterinary clinics, auction houses, and ticket and travel agencies are considered indoor retail or service uses. See also outdoor retail sales and service uses and personal and professional services.

Permitted by Right in the following districts: NC, DC, GC.

Special Use in the following districts: Not applicable.

(9) Mini-Warehouse

Mini-warehouse facilities are land uses oriented to the indoor storage of items entirely within partitioned buildings having an individual access to each partitioned area. Such storage areas may be available on either a condominium or rental basis. The facility shall be designed so as to minimize adverse visual impacts on nearby developments. The color, exterior materials, and orientation of proposed buildings and structures shall complement surrounding development.

Permitted by Right in the following districts: GC, LI, HI.

Special Use in the following districts: AG, NC, DC.

(10) Office

Office land uses include all exclusively indoor land uses whose primary functions are the handling of information or administrative services. Such land uses do not typically provide services directly to customers on a walk-in or appointment basis. Examples include government offices, general or business offices, and political organization offices. Permitted by Right in the following districts: NC, DC, GC, LI, HI.

Special Use in the following districts: Not applicable.

(11) Outdoor Commercial Entertainment

Outdoor commercial entertainment land uses include all land uses which provide entertainment services partially or wholly outside of an enclosed building. Such activities often have the potential to be associated with nuisances related to noise, lighting, dust, trash and late operating hours.

Examples of such land uses include outdoor commercial swimming pools, driving ranges, miniature golf facilities, golf courses, amusement parks, skating rinks, drive-in theaters, go-cart tracks, and racetracks.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: AG, GC.

(12) Outdoor Retail Sales and Service

Outdoor retail sales and services include all land uses which perform maintenance services, including repair, and have all, or any portion of the operations, including vehicle staging, located outside of an enclosed building and uses which conduct sales or display sales or rental merchandise or equipment outside of an enclosed building. Such uses because of their nature tend to be associated with more noise and disturbances due to the outdoor nature of the use than typical indoor retail uses.

Example of such land uses include vehicle, boat and similar sales; vehicle rental; manufactured housing sales and monument sales; automobile repair uses and body shops, motor vehicle towing services; service stations and automobile mini-markets; car washes; building materials and supply stores; outdoor nurseries and garden centers;

permanent flea markets; taxicab services; and delivery services.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: DC, GC.

Special Use regulations:

- A. The display of items shall not be permitted in required bufferyards.
- B. In no event shall the display of items reduce or inhibit the use or number of parking stalls provided on the property below the requirement. If the number of provided parking stalls on the property is already less than the requirement, such display area shall not further reduce the number of parking stalls already present.
- C. Signs, screening, enclosures, landscaping, or materials being displayed shall not interfere in any manner with either on-site or off-site traffic visibility, including potential traffic/traffic and traffic/pedestrian conflicts.
- D. Inoperative vehicles or equipment, or other items typically stored or displayed in a junkyard or salvage yard, shall not be displayed under the provisions of this land use.

(13) Personal or Professional Service

Personal and professional service land uses include all exclusively indoor land uses, except Health Service uses, whose primary function is the provision of services directly to an individual on a walk-in or appointment basis.

Example of such land uses include professional services, insurance services, realty offices, financial services, banks and savings and loans, veterinarian clinics, barber shops, beauty shops, tanning salons, and related land uses.

Permitted by Right in the following districts: NC, DC, GC.

Special Use in the following districts: Not applicable.

(14) Sexually-Oriented Land Uses

Sexually-oriented land uses include any facility oriented to the display of sexually-oriented materials such as videos,

movies, slides, photos, books, or magazines; or actual persons displaying and/or touching sexually specified areas, including massage establishments. For the purpose of this Title, "sexually specified areas" includes any one or more of the following: Genitals, anal area, female areola or nipple; and "sexually-oriented material" includes any media which display sexually specified area(s).

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: HI.

Special use regulations:

Exterior building appearance and signage shall be designed to ensure that the use does not detract from the ability of businesses in the vicinity to attract customers, nor affect the marketability of properties in the vicinity for sale at their assessed values.

Rationale: The incorporation of this subsection into this Title is designed to reflect the City's finding that sexually-oriented commercial uses have a predominant tendency to produce certain undesirable secondary effects on the surrounding community, as has been demonstrated in other, similar jurisdictions. Specifically, the City is concerned with the potential for such uses to limit: the attractiveness of nearby locations for new development, the ability to attract and/or retain customers, and the ability to market and sell nearby properties at a level consistent with similar properties not located near such facilities. It is explicitly not the intent of this subsection to suppress free expression by unreasonably limiting alternative avenues of communication, but rather to balance the need to protect free expression opportunities with the need to implement the City's Comprehensive Plan and protect the character and integrity of its business areas and neighborhoods.

(15) Health Service

Health service land uses include all exclusively indoor land uses which involve: the performing of any type of medical or dental procedure or medical or dental activity on a human being; the performing of any type of surgical operation, for medical, dental or aesthetic purposes, whereby human skin or tissue is, with the aid of any needle, knife, laser or other instrument, penetrated, cut, burned or vaporized; diagnosis, treatment, correction or prevention of any disease, ailment, defect, injury, infirmity, deformity,

pain, or other condition of the mind or body of a human being; or the drawing of human blood or bodily fluids.

For the purpose of this Title, "Health Service" includes not only uses strictly relating to the practice of medicine or dentistry, but also uses which involve, for aesthetic or non-medical purposes, any of the aforementioned activities, including but not limited to tattooing, body piercing, acupuncture and other related activities.

Permitted by Right in following districts: Not applicable.

Special Use in the following districts: All Districts.

Special Use Regulations: Any health service use must, as a condition to operation, abide by any and all health regulations presently in effect with respect to the intended use.

Rationale: The incorporation of this subsection into this Title is designed to reflect the City's cognizance that uses which involve contact with human skin, tissue or bodily fluids require the taking of special precautions with respect to the manner in which such contact is made and the risk involved with the handling and containment of potentially infectious waste and bloodborne pathogens. The City is concerned with the heightened potential for such uses to contribute toward the spread of infectious diseases and the need for the proper handling and containment of potentially infectious waste and bloodborne pathogens in order to protect the public health, safety, morals, general welfare, and overall well-being of the City and its citizens. The City has further given due consideration to customer flow patterns, traffic, hours of operation, in determining the appropriateness of this category in various Zoning Districts. In categorizing such uses as tattoo parlors and establishments which perform body piercing, with uses related to the practice of medicine or dentistry, it is explicitly not the intent of this subsection to or in any way suppress free expression by unreasonably limiting alternative avenues of communication, or to restrict the practice of either of those occupations as a trade or business, but rather to balance the need to protect free expression opportunities and the unrestricted right to engage in those trades, with the need to implement the City's Comprehensive Plan and to protect the health, safety, and general welfare of the City.



(e) Industrial Land Uses

(1) Communication Tower

Communication towers include all private free-standing broadcasting, receiving, or relay structures, and similar principal land uses; and any office, studio or other land uses directly related to the function of the tower. The tower shall be located so that there is sufficient radius of clear land around the tower so that its collapse shall be completely contained on the property.

Permitted by Right in the following districts: Not applicable.  
Special Use in the following districts: AG, LI, HI.

(2) Composting Operations

Composting operation include all collection, storage, and processing of vegetation wastes over twenty (20) cubic yards which shall not involve food scraps or other vermin-attracting materials.

Permitted by Right in the following districts: Not applicable.  
Special Use in the following districts: LI, HI.

(3) Heavy Industrial Land Use

Heavy industrial land uses are industrial facilities which may be wholly or partially located outside of an enclosed building; may have the potential to create certain nuisances which are detectable at the property line; and may involve materials which pose a significant safety hazard. However, in no instance shall a heavy industrial land use exceed the performance standards of this title or as regulated by the State of Indiana. Examples of heavy industrial land uses include meat product producers; alcoholic beverage producers; paper, pulp or paperboard producers; chemical and allied product producers (except drug producers) including poison or fertilizer producers; petroleum and coal product producers; asphalt, concrete or cement producers; tanneries; stone, clay or glass product producers; electrical distribution equipment producers; electrical industrial apparatus producers; transportation vehicle producers; commercial sanitary sewage treatment plants; railroad switching yards; and recycling facilities not involving the on-site storage of salvage materials.

Permitted by Right in the following districts: HI.

Special Use in the following districts: Not applicable

(4) Junkyard, Salvage Yard, or Automobile Wrecking Yard

Junkyard or salvage yard facilities are any land or structure used for a salvaging operation including but not limited to: the above-ground, outdoor storage and/or sale of waste paper, rags, scrap metal, and any other discarded materials intended for sale or recycling; and/or the collection, dismantlement, storage, or salvage of 2 or more unlicensed and/or inoperative vehicles. Recycling facilities involving on-site outdoor storage of salvage materials are included in this land use. See Chapter 7.08 bufferyard requirements.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: HI.

(5) Light Industrial Land Uses

Light industrial land uses are industrial facilities at which all operations (with the exception of loading operations):

- A. are conducted entirely within an enclosed building;
- B. are not potentially associated with nuisances such as odor, noise, heat, vibration, and radiation which are detectable at the property line;
- C. do not pose a significant safety hazard (such as danger of explosion); and
- D. comply with all of the performance standards of this Title. Light industrial land uses may conduct retail sales activity as an accessory use.

Permitted by Right in the following districts: LI, HI.

Special Use in the following districts: Not applicable.

(6) Mining, Extraction and Related Uses

Mining and extraction uses include any land uses involving the removal of soil, clay, sand, gravel, rock, minerals, peat, or other material in excess of that required for approved on-site development or agricultural activities. All such uses shall comply with all County, State, and Federal regulations. Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: AG, NC, DC, GC, LI, HI (outside corporate boundaries). AG, LI, HI (inside corporate boundaries).

Special use regulations: Required site plans shall include detailed site restoration plans, which shall include at a minimum, detailed grading and revegetation plans, and a detailed written statement indicating the timetable for such restoration.

State Law Reference: Section 36-7-4-1103, Indiana Code.

(7) Motor Freight Terminal

Freight terminals are facilities oriented to the short-term storage and trans-shipment of materials, and/or the outdoor storage of trucks and related equipment.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: LI, HI.

(8) Waste Disposal Facility

Waste disposal facilities are any areas used for the disposal of solid wastes but not including composting operations. Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: HI.

Special Use regulations:

- A. Shall comply with all County, State and Federal regulations.
- B. Operations shall not involve the on-site holding, storage or disposal of hazardous materials in any manner.
- C. Required site plans shall include detailed site restoration plans, which shall include at a minimum, detailed grading and revegetation plans, and a detailed written statement indicating the timetable for such restoration. (Ord. 99-5, May 24, 1999) (Ord. 97-08, S2, September 22, 1997) (Ord. 96-02, S1, March 25, 1996)

#### **7.04.040 Accessory Uses, Buildings, and Structures**

(a) General Provisions

Accessory uses, buildings and structures are those which are incidental to the principal activity conducted on the subject property and subordinate in area, extent and purpose thereto. All

accessory structures including those described in detail below, shall comply with the following general provisions unless specifically noted elsewhere in this Title:

(1) Restriction on Residential Inhabitation

In no instance shall an accessory structure, cellar, basement, tent or trailer be used as a residence unless permitted herein.

(2) Prohibition in Front Yards and Street Side Yards

Accessory uses, buildings and structures including garages and sheds shall not be located between the building line and the front or street side lot line unless specifically noted except open fences (such as split rail, chain link, wrought iron) a maximum of four (4) feet in height.

(3) Height

All accessory structures in a residential zoning district shall not exceed 16 feet in height nor 1,000 square feet in area. Fences shall not exceed 6 feet in height in all residential and commercial districts, nor 8 feet in height in agricultural or industrial districts. (See (2) above for height of fences in front yard.) (Ord. 12-13, S1, June 11, 2012)

(4) Setbacks from Property Lines

All accessory use and structures other than fences shall be located a minimum of five (5) feet from all property lines in all zoning districts.

(b) Agricultural Labor Camp

Agricultural and migrant labor camps include at least one (1) building or structure, tent, trailer, or vehicle, including land, established, operated, or used as living quarters for at least five (5) adult seasonal or temporary workers engaged in agricultural activities, including related food processing.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: AG, LI, HI.

Special Use regulations:

Agricultural labor camps shall be accessory uses to an active principal use, under the same ownership, which is located within the City of Cannelton or its extraterritorial area.

State Law Reference: Chapter 16-41-26 Indiana Code.

(c) Commercial Apartment

Commercial apartments are dwelling units which are generally located above the ground floor of a building used for a commercial land use. Commercial apartments may be allowed in the rear of the first floor of a building only if permitted after review by the Board of Zoning Appeals as a Special Use. Parking spaces provided by nonresidential land uses on the site may be counted for required parking for the apartment with the approval of the Zoning Administrator.

Permitted by Right in the following districts: DC, GC.

Special Use in the following districts: AG, NC.

(d) Child Care Home

Child care homes are residential structures in which children receive child care from a provider while unattended by a parent, legal guardian, or custodian, for regular compensation, and for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays, and holidays.

Permitted by Right in the following districts: All Districts.

Special Use in the following districts: Not applicable.

State Law Reference: Sections 12-7-2-28.6, 12-17.2-5, and 36-7-4-1108, Indiana Code.

(e) Drive-Up Facility

Drive-up facilities include all land uses which perform sales to persons in vehicles on a drive-through basis. Such land uses often have traffic volumes which exhibit their highest levels concurrent with peak traffic flows on adjacent roads. Examples of such land uses include restaurant and banking drive-ups, and drive-through windows connected with office uses (such as a bill payment window) or retail establishments (such as a photo processing drive-up window). See also fuel stations, car washes, and quick oil changes under outdoor retail sales and drive-in theaters under outdoor commercial entertainment. In some instances this use may be the principal use of a zoning lot, in which case the use shall also be reviewed as a Special Use under the standards below in addition to meeting the setback, etc. requirements of a Principal use on a lot.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: NC, DC, GC.

Special use regulations:

- (1) The drive-through facility shall be designed so as to not impede or impair vehicular and pedestrian traffic movement, or exacerbate the potential for pedestrian/vehicular conflicts. Each drive-up lane shall have a minimum stacking length of thirty (30) feet behind

the pass through window and fifteen (15) feet beyond the pass through window.

- (2) The setback of any overhead canopy or similar structure shall be a minimum of ten (10) feet from all street rights-of-way lines, a minimum of twenty (20) feet from all residentially-zoned property lines, and shall be a minimum of five (5) feet from all other property lines. The total height of any overhead canopy or similar structure shall not exceed twenty (20) feet as measured to the highest part of the structure.

(f) Home Occupation

Home occupations are economic activities performed within the dwelling unit by the residents thereof which are clearly incidental to the uses as a residence and which comply with the following requirements. Examples include personal and professional services, and handicrafts. Specifically excluded from home occupations are Health Service land uses, due to health risks associated with among other things, the appropriate handling of and containment of potentially infectious waste and bloodborne pathogens.

Permitted by Right in the following districts: All Districts

Special Use in the following districts: Not applicable.

- (1) The home occupation shall be conducted only completely within the dwelling unit, and not in any accessory building or structure, and not within any garage or on any porch, deck, patio or other unenclosed or partially-enclosed portion of the dwelling unit.
- (2) The home occupation shall be conducted by a resident of the dwelling unit, and no more than two (2) other persons shall be employed, on either a part-time or full-time basis at that site.
- (3) No more than twenty-five (25) percent of the total living area of the dwelling (exclusive of garage and porch areas) shall be used for the home occupation.
- (4) The dwelling unit used for the home occupation shall not serve as a storage facility for a business conducted elsewhere.
- (5) The sale of items at the location of the home occupation shall be limited to items produced on-site and shall be conducted only on an appointment basis.

- (6) No activity, materials, goods, or equipment incidental to the home occupation shall be externally visible.
- (7) Only one (1) sign, not to exceed two (2) square feet, may be used to advertise a home occupation. Said sign shall not be located within a right-of-way, and shall be of an appearance which is harmonious with nearby residential areas.
- (8) The use of the dwelling unit for a home occupation shall in no way be incompatible with the character of nearby residential areas or create a nuisance for neighboring properties.
- (9) No more than two (2) home occupations shall be carried on in any single dwelling unit.
- (10) Other than typical handicrafts, no production or manufacturing shall be conducted in the dwelling unit.
- (11) No deliveries shall be permitted by other than passenger automobile or commercial delivery van.

(g) Individual Septic Disposal System

This land use includes any State or County approved septic disposal system.

Permitted by Right in the following districts: AG.

Special Use in the following districts: CR, SR, DR, MR, NC, DC, GC, LI, HI.

Special use regulations:

- (1) Minimum lot size of 0.5 acres.
- (2) No available public sewage disposal system within one thousand (1000) feet of any point on the subject property.
- (3) Development shall attach to public sewage disposal system within one (1) year of its availability to the subject property. Each building shall install and continually maintain a conventional sewage system tap-in line upon development, so as to facilitate hook-up to the public system upon its availability.

(h) Outdoor Display Incidental to Indoor Sales and Service

Sales and service uses may display items outdoors as an accessory use either on a daily basis or on a temporary basis for special events

and/or special sales. Displays exceeding twenty-five (25) percent of the gross floor area of the principal building shall be considered outdoor retail sales and service uses.

Permitted by Right in the following districts: NC, DC, GC.

Special Use in the following districts: Not applicable.

- (1) The display area shall not exceed twenty-five (25) percent of the gross floor area of the principal building on the site.
- (2) The display of items shall not be permitted in required bufferyards.
- (3) In no event shall the display of items be located so as to cause vehicles to park in areas other than designated parking stalls.
- (4) Signs, screening, enclosures, landscaping, or materials being displayed shall not interfere in any manner with either on-site or off-site traffic visibility, or pedestrian or vehicular traffic flow.
- (5) Inoperative vehicles or equipment, or other items typically stored or displayed in a junkyard or salvage yard, shall not be displayed under the provisions of this land use.
- (6) The display of items on public property such as public sidewalks shall in no way cause a threat to the public, health, safety, comfort, convenience and general welfare.
- (7) If the subject property abuts a residential use, sales and display activities shall be limited to daylight hours.

(i) Outdoor Storage

(1) Permitted Locations

Outdoor storage of any materials, equipment, merchandise, or vehicles in unenclosed areas for more than forty-eight (48) hours is permitted only as follows:

- A. Outdoor industrial storage is permitted in approved storage areas per the adopted site plan for the property in the Heavy Industrial district.
- B. Outdoor display and storage in connection with approved outdoor sales and service uses is permitted



in locations approved per the adopted site plan for the property.

- C. Outdoor storage is permitted accessory to agricultural activities in agricultural zoning districts.
- D. Outdoor storage is permitted in approved junkyards and salvage yards.

(2) Residential Zoning Districts

A. General Outdoor Storage

Outdoor storage of any kind other than firewood and yard equipment is not permitted in any residential district unless specifically allowed hereunder.

B. Storage of Motor Vehicles

Motorized recreational equipment in operable condition including boats, snowmobiles, all terrain vehicles, and motor homes, shall be permitted to be stored in the open on a lot if owned by the owner of the lot and if said equipment is stored a minimum of five (5) feet from any and all property lines, and located outside any front yard or any required street side yard (except for designated parking spaces). Said equipment storage shall not be located in a minimum required parking space during said equipment's off-season. Motor homes which are used on a year-round basis shall be permitted in said areas on a year-round basis. (Winterization of such vehicles shall be a conclusive indication of non-use.)

(j) Signs

This Title is intended to regulate some, but not all signs placed on private or public property. It is not the intent to regulate the content of signs, but merely their size and placement. Signs equal to or less than two (2) square feet in area are not considered signs for the purposes of this section. Signs permanently affixed to vehicles, attached to vending and similar machines, and directional and informational signs for the conduct of business on the premises shall not be considered signs for overall number and area requirements herein.

(1) Permanent Signs - Residential

Except as otherwise provided herein for bed and breakfast inns and home occupations, no signs shall be permitted for any residential use other than one (1) building/wall sign and one (1) free-standing sign per lot not to exceed two (2) square feet in area each and one subdivision or apartment identification sign not to exceed twenty (20) square feet in area per frontage.

(2) Permanent Signs - Non-Residential

Commercial, industrial and agricultural land uses may erect on-premise signs that comply with the following:

- A. No more than one (1) free-standing sign shall be located on any street frontage with an area not to exceed one (1) square foot of sign for each one (1) linear foot of street frontage (includes all sign faces). A free-standing sign for the purposes of this section shall mean any nonmovable sign not attached to a building such as pylon signs, ground signs and pole signs.
- B. The total of all signs erected on a single building facade shall not exceed one (1) square foot of sign for every one (1) linear foot of building facade on which said sign is located (such as roof, awning, suspended, projecting, and wall signs).
- C. One (1) portable sign per lot a maximum of twenty-four (24) square feet in area shall be permitted (such as sandwich board signs, changeable copy signs or similar signs).
- D. Signs shall be placed and located so as to maintain the integrity of the building or structure, shall not conflict with pedestrian or traffic movements, shall not be injurious to the public health, safety or welfare, and shall be designed in keeping with the character of the structure and surrounding land uses.

(3) Temporary Signs

Temporary signs, including political signs shall not be located on any tree or public utility pole. Temporary signs for the purpose of this section shall mean any display or sign

constructed of fabric, canvas, plastic, plywood or other light material and designed or intended to be displayed for a short period of time (such as banners, balloons, construction signs, sales event signs, political signs, yard sale signs). All temporary signs shall be removed within forty-eight (48) hours after the event they advertise and shall not be erected no more than sixty (60) days prior to the event. In the event such signs are not removed from the public right-of-way or public property within forty-eight (48) hours, the City may remove the sign and abate the violation per Section 7.10.070.

(4) Billboards and Outdoor Advertising Signs

No outdoor advertising signs or billboards shall be permitted except along state highways as defined and in accordance with Chapter 8-23-20-5 of the Indiana Code.

Rationale: The restriction of outdoor advertising signs furthers two public interests: that of reducing visual clutter which has been determined to be a cause of unsafe traffic conditions and that of promoting the goal of the Comprehensive Plan of improving the visual appearance of the City thereby protecting its historical and architectural resources. Adequate and ample channels of commercial speech remain available for the message portrayed on such signs including print media, broadcast media, and point-of-purchase display.

(5) Non-Conforming and Exempt Signs

Lawful signs which do not conform to the provisions of this section existing as of the effective date of this Title, shall be considered non-conforming and shall be subject to the provisions of Chapter 7.07. No non-conforming sign shall be altered, rebuilt, or moved without being brought into compliance with the requirements of this Title. Routine maintenance and repainting or sign face changes are permitted and are not considered alterations for the purposes of this section. Government and community signs are exempt from the provisions of this section.

(6) Other Off-Premise Signs besides Billboards

No signs other than those permitted per (4) above shall be located on any site other than the site on which the activity the sign advertises is located. The only exemptions other than (4) above are temporary signs and directional signs a maximum of four (4) square feet in area. No off-premise sign

shall be erected without the property owner's permission. No off-premise signs shall be permitted in public rights-of-way or on public property without the approval of the Zoning Administrator. The Zoning Administrator may regulate the style, design, location, placement and other aspects of signs placed on public property so as to protect the public health, safety, morals, comfort, convenience, and general welfare, and to prevent clutter, confusion, or alleviate maintenance concerns. (Ord. 2015-09, July 13, 2015) (Ord. 12-13, S1, June 11, 2012) (Ord. 99-5, May 24, 1999) (Ord. 97-08, S1, Sept. 22, 1997) (Ord. 96-02, S1, March 25, 1996)

#### **7.04.050 Temporary Uses.**

(a) General Temporary Uses

Any temporary use or structure not specified below connected with construction, special events or emergency operations, shall be permitted to locate on a zoning lot for a maximum of six (6) months and shall be in character with the surrounding area and compatible with adjoining land uses. Any temporary use not meeting these standards shall be reviewed as a Special Use by the Board of Zoning Appeals. See outdoor display under accessory uses for temporary outdoor sales and display uses.

(b) Mobile Home

A mobile home is any vehicle without motive power designated by the manufacturer or maker with hitch and undercarriage to permit the attachment of axles and wheels, and so designed to permit its being conveyed upon public streets and highways and so designed, constructed or reconstructed as to permit the vehicle to be temporarily used as a single family dwelling.

Permitted by Right in the following districts: Not applicable.

Special Use in the following districts: AG, MR (if exemption for certain mobile home "upgrades" is not applicable).

Special Use regulations:

The mobile home shall be compatible with nearby land uses and shall not detract from the area in terms of sightlessness and property values. A photograph of the mobile home shall be kept on file, and the mobile home shall be continuously maintained in the same condition as the day it was erected. The Board of Zoning Appeals may place a time period up to a maximum of five (5) years in which the mobile home may be temporarily placed on the proposed lot.

Exemption from Special Use regulations available for certain Mobile Home "Upgrades":

The foregoing Special Use regulations shall be applicable to situations where an exemption is not available (i.e., petitioners seeking permission to erect a mobile home in an Agricultural zoning district; petitioners seeking permission to erect a mobile home in a Multi-Family Residential zoning district upon which no mobile home is currently lawfully situated). Petitioners seeking permission to replace an existing mobile home with a newer, replacement, or upgraded mobile home in a Multi-Family Residential zoned district, in the same location as where their mobile home is currently lawfully situated, will be able to apply to the Zoning Administrator for an exemption from the Special Use regulations otherwise in effect. In order to secure permission to replace an existing mobile home with another newer or upgraded mobile home within the Multi-Family Residential zoning district, the petitioner must submit a written request for exemption to the Zoning Administrator setting forth at least the following criteria: (1) a mobile home is currently lawfully situated on real estate located within a Multi-Family Residential zoning district and include the address of that location; (2) whether the Board of Zoning Appeals previously granted a Special Use allowing the mobile home to be erected at its present location; and (3) the petitioner seeks permission to replace the existing mobile home with a newer or upgraded version. The petitioner can supplement the request with further information as to whether the allowance of the replacement will make the area upon which the replacement mobile home is situated even more compatible with nearby land uses; that it will not detract from the area in terms of sightliness or property values; and/or that it will enhance the area upon which the mobile home is situated and nearby land uses. A photograph of the replacement mobile home as well as the existing mobile home shall be submitted to the Zoning Administrator along with a short written request for exemption setting forth the criteria enumerated above. No fee, notice or publication is required to request such an exemption. The intent of the paragraph is to allow advantageous changes to uses which are already allowed subject only to the review of the Zoning Administrator. In the event that the Zoning Administrator finds it questionable as to whether or not the requisite criteria have been met or is unable, based upon the information provided, to issue an exemption, the Zoning Administrator should treat the exemption request as a Special Use request, promptly refer the matter to the Board of Zoning Appeals for Special Use Review, and the procedures set forth in Section 7.09.040 shall be followed. As long as the requisite criteria can be met by subsequent owners or petitioners, the exemption allowed for by this section shall be continued regardless of any change in

ownership of the subject property. The Zoning Administrator shall examine each written request and accompanying information and the premises upon which the replacement mobile home is proposed to be located. If it shall appear that the replacement proposed is in compliance with all the requirements of this section and any other applicable sections, the Zoning Administrator shall then approve the exemption request by stamping such approval on a copy of the written request for exemption and delivering the same to the petitioner. Another copy of such approval shall be retained in the City records maintained by the Zoning Administrator. The Zoning Administrator is authorized and empowered to revoke any exemption approved by him upon failure of the petitioner to fully comply with any provision of this Ordinance.

Rationale:

The City of Cannelton has mobile homes situated in the Multi-Family Residential Zoning district and, despite being maintained in the condition upon which they were erected, have aged and deteriorated, at least to some extent, through the passage of time. Having a newer or upgraded version of such mobile homes could serve to enhance the property values of nearby land uses making an exemption appropriate in Multi-Family Residential zoning districts where such older structures already lawfully exist. Requests for exemption from the Special Use regulations shall be considered a Zoning Administrator review, thus eliminating more stricter standards and the notice and publication and fee requirements otherwise necessary to obtain a Special Use from the Board of Zoning Appeals in situations where the compatibility with adjacent land uses is actually enhanced. (Ord. 2005-09, June 27, 2005)

(c) Outdoor Assembly

Includes any organized outdoor assembly of more than one hundred (100) persons on private property for thirty (30) days or less. Any use wishing to locate temporarily on a lot for over thirty (30) days as an outdoor assembly land use shall receive approval by the Board of Zoning Appeals as a Special Use. Outdoor assembly may include land uses such as carnivals, circuses, and outdoor arts and crafts shows.

Permitted by Right in the following districts: AG, DC, GC, LI, HI.

Special Use in the following districts: CR, SR, DR, MR, NC.

The following regulations shall apply to all outdoor assembly land uses:

- (1) Activities shall not obstruct pedestrian or vehicular circulation, including vehicular sight distances.

- (2) Adequate parking, drinking water, and toilet facilities shall be provided.
  - (3) If subject property abuts a residential neighborhood, activities shall be limited to daylight hours.
  - (4) Adequate provisions for crowd control shall be made.
- (d) Outdoor Display  
Refer to Section 7.04.040 (h) for regulations applicable to outdoor display as an accessory use and as a temporary use. (Ord. 96-02, S1, March 25, 1996)

## Chapter 7.05

### BULK, DENSITY AND INTENSITY REGULATIONS

#### Sections:

7.05.010	Purpose
7.05.020	Bulk, Density and Intensity Standards
7.05.030	Front Yard or Street Side Yard Setback Adjustment
7.05.040	Exceptions to Maximum Height Regulations
7.05.050	Permitted Intrusions in Required Yards
7.05.060	Blanket Variances

**7.05.010 Purpose.** The purpose of this Chapter is to outline the requirements for building location and bulk, as well as, density regulations for residential projects and intensity regulations for nonresidential projects for sites within the jurisdiction of this Title. How a site may be developed is determined in part by 1) the area or size of the site, 2) the configuration of the site, 3) the area of the site devoted to streets, easements, wetlands, steep slopes, and other restricted areas or environmental constraints, 4) the zoning district in which the site is located, 5) the presence of any overlay zoning districts such as floodplains or historic preservation, 6) adjoining zoning districts, land uses, and roadways, and 7) the uses proposed.

Rationale: This Chapter is designed to ensure that the goals and objectives of the Comprehensive Plan are implemented. Appearance and community character are primary concerns of the Plan and are essential for economic development. These regulations are intended to maintain the small town character of the community, the feeling of enclosure by the higher densities of the historic structures in the downtown area, the open character of the residential subdivisions, to provide for intense downtown industrial areas and open industrial parks, and to enhance the appearance of the State Highway 66 corridor. Lot sizes and gross density are intended to maintain the existing degree of compactness of dwellings in the city's various neighborhoods and prevent overcrowding. Lot size and floor area ratios are intended to ensure that commercial and industrial uses are compatible with each other and nearby land uses and viable for the conduct of business. Lot width is aimed at providing proper access to lots from public ways and reducing traffic hazards. Building heights are intended to maintain the feel and the character of existing areas, preserve views, support fire-fighting capacity, and protect solar access. Yard and setback requirements protect privacy, reduce dangers from fire and other hazards, and preserve character, provide open space, and preserve views. These regulations individually and in combination provide an array of benefits in addition to those mentioned here, with the overall aim of providing for a rational pattern of land uses which maintains and improves property values. (Ord. 96-02, S1, March 25, 1996)



**TABLE 2:  
BULK, DENSITY AND INTENSITY REGULATIONS**

AG	Agricultural	MR	Multiple-Family Residential	GC	General Commercial
CR	Countryside Residential	NC	Neighborhood Commercial	LI	Light Industrial
SR	Single-Family Residential	DC	Downtown Commercial	HI	Heavy Industrial
DR	Downtown Residential				

<i>Standard:</i>	<i>Zoning District:</i>									
	AG*	CR	SR	DR	MR	NC	DC	GC	LI	HI
<b>Minimum Lot Size</b> (sq.ft. unless noted)	5 ac. 1 ac.	1 ac.	6,000	3,500	5,000	10,000	3,000	5,000	10,000	10,000
<b>Minimum Lot Width</b> (ft.)	180 130	130	60	35	50	70	30	50	70	70
<b>Maximum Building Height</b> (floors-res. ft.-non-res.)	40 2.5	2.5	2.5	3	2.5	40	40	40	40	40
<b>Maximum Floor Area Ratio</b> (non-res) (sq.ft. building/sq.ft. land)	.2					.4	2.0	.4	.4	.6
<b>Maximum Gross Density</b> (res) (no. of units/one acre gross site area)	.05	1.0	5.0	8.0	12.0					
<b>Yards - Principal Buildings:</b> (ft.)										
Front	30	30	30	20	20	30	0	20	30	0
Rear	30	30	30	20	20	30	0	15	15	0
Side	10	10	5	5	5	5	0	0	15	0
<b>Yards - All Parking/Driveways:</b> (ft.)										
Front	20	20	10	5	5	20	5	10	10	5
Rear	20	20	10	5	5	10	0	5	5	0
Side	10	10	5	0	5	5	0	5	5	0

\*Where two figures are given in the AG district, the top is for non-residential land uses and the bottom for residential land uses.

**Note:** See text in this Chapter 7.05 for exceptions to these requirements. Special uses may have different standards than those noted here.  
See Chapter 7.04.030 for detailed standards for individual land uses. See Section 7.04.040 for standards for accessory uses

**7.05.020 Bulk, Density and Intensity Standards.** Table 2 outlines the bulk, density, and intensity regulations for each of the zoning districts. All lots created, structures erected, and uses established after adoption of this Title shall conform with these requirements unless a variance is granted per Section 7.09.050 or unless a adjustment, exception or blanket variance is authorized per Sections 7.05.030, 7.05.040, and 7.05.060, respectively. (Ord. 96-02, S1, March 25, 1996)

**7.05.030 Front Yard or Street Side Yard Setback Adjustment.** The required front yard/street side yard setback for any use may be reduced for a principal structure on any lot where more than fifty (50) percent of the same type of principal structure on the same block face or street face do not meet the required front/street side yard setback. In such instances, the required front or street side yard setback for the principal structure shall be the average of all principal structures of the same type on said block face or street face. (Ord. 96-02, S1, March 25, 1996)

**7.05.040 Exceptions to Maximum Height Regulations.** The maximum permitted number of floors or maximum permitted height listed in Table 2 shall be the maximum for all buildings and structures except that the following are permitted to exceed the maximum height regulations by twenty-five (25) percent, within any district where permitted: church spires, belfries, cupolas and domes which do not contain usable space, public monuments, water towers, fire and hose towers, flag poles, chimneys, smokestacks, cooling towers, and elevator penthouses. In order to secure permission to exceed the maximum height or permitted number of floor regulations the petitioner shall apply for a Special Use Permit per Section 7.09.040. An additional one (1) foot setback from all or specifically designated property lines may be required as part of the Special Use permit for every one (1) foot in height over thirty (30) feet in residential and agricultural zoning districts and over forty (40) feet in height in non-residential zoning districts.

**Rationale:** The City of Cannelton has several existing taller structures and contains many steeply sloped areas of varying elevations. Therefore, there may exist many occasions where structures exceeding the height restrictions may be appropriate. Requests to exceed the maximum permitted height shall be reviewed as Special Uses rather than Variances. In this way, such requests would need to meet standards of compatibility with adjoining land uses rather than the more stricter standards relating to hardship. See also Section 7.04.040 for heights of accessory structures. (Ord. 96-02, S1, March 25, 1996)

**7.05.050 Permitted Intrusions in Required Yards.** Portions of residential structures or buildings shall be permitted to intrude into the following required yards:

- (a) Front or Street Side Yards, Side Yards and Rear Yards.  
Chimneys, flues, sills, pilasters, lintels, ornamental features, cornices, eaves, and gutters for residential buildings; provided they do not encroach more than two and one-half (2.5) feet into the required yard.

- (b) Rear or Side Yards Only.  
Overhanging bays on residential buildings which do not extend more than two (2) feet into the required yard and which do not contain a gross floor area of more than twenty (20) square feet.
- (c) Rear Yard Only.  
Balconies or similar appurtenances to residential buildings which are located more than three (3) feet above grade; provided they do not extend more than six (6) feet into the required rear yard. (Ord. 96-02, S1, March 25, 1996)

**7.05.060 Blanket Variances.** A variance for any and all requirements of this Chapter is hereby automatically granted to all developments and lots in their configuration lawfully existing or as finally approved as of the effective date of this Title. All new construction, or any enlargement, expansion, or extension of an existing development or structure shall comply with the provisions of this Chapter. Lots which do not meet the requirements of this Chapter shall be granted this blanket variance so as to be considered buildable, however, all developments constructed on these lots after the effective date of this Title shall comply with all of the provisions herein, including yard and setback requirements unless a variance is granted by action of the Board of Zoning Appeals as provided in Section 7.09.050.

Rationale: The blanket variance is intended to prevent the creation of certain nonconforming developments. The adoption of this blanket variance ensures that developments approved prior to the adoption of this Title do not encounter difficulty in transferring ownership because they would otherwise be considered nonconforming. (Ord. 96-02, S1, March 25, 1996)

## Chapter 7.06

### FLOOD PLAIN MANAGEMENT REGULATIONS

#### Sections:

7.06.005	Floodplain Overlay District
7.06.010	Statutory Authorization, Findings of Fact, Purpose, and Objectives
7.06.020	Definitions
7.06.030	General Provisions
7.06.040	Administration
7.06.050	Provisions for Flood Hazard Reduction
7.06.060	Variance Procedures
7.06.070	Severability
7.06.080	Effective Date

**7.06.005 Floodplain Overlay District.** There is hereby established a floodplain overlay district as herein described whose restrictions shall be in addition to those of the underlying zoning district. Wherever a discrepancy exists between the floodplain regulations and the zoning district regulations, the more restrictive shall apply. (Ord. 2015-11, S7.06.005, July 15, 2015) (Ord. 2005-20, Oct. 24, 2005)

#### **7.06.010 Statutory Authorization, Findings of Fact, Purpose, and Objectives.**

##### (a) Statutory Authorization.

The Indiana Legislature has in IC 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Common Council of the City of Cannelton does hereby adopt the following floodplain management regulations. (Ord. 2015-11, S7.06.010(a), July 15, 2015) (Ord. 2005-20, Article 1, SA, Oct. 24, 2005) (Ord. 96-16, S7.06.010(a), Dec. 30, 1996) (Ord. 92-02, S1, 1992)

##### (b) Findings of Facts.

- (1) The flood hazard areas of the City of Cannelton are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood

hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages. (Ord, 2015-11, S7.06.010(b), July 15, 2015) (Ord. 2005-20, Article 1, SB, Oct. 24, 2005)

(c) Statement of Purpose.

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.
- (4) Control filling, grading, dredging, and other development which may increase erosion or flood damage.
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- (6) Make federal flood insurance available for structures and their contents in the City by fulfilling the requirements of the National Flood Insurance Program. (Ord. 2015-11, S7.06.010(c), July 15, 2015) (Ord. 2005-20, Article 1, SC, Oct. 24, 2005) (Ord. 96-16, S7.06.010(b), Dec. 30, 1996) (Ord. 92-02, S2, 1992)

(d) Objectives.

The objectives of this ordinance are:

- (1) To protect human life and health.
- (2) To minimize expenditure of public money for costly flood control projects.

- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (j) To minimize prolonged business interruptions.
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas. (Ord. 2015-11, S7.06.010(d), July 15, 2015) (Ord. 2005-20, Article 1, SD, Oct. 24, 2005)

#### 7.06.020 Definitions.

- (a) Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.
- (1) **A zone** means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The definitions are presented below:
  - A. Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been preformed, no base flood elevation or depths are shown.
  - B. Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30.)
  - C. Zone AO: Areas subject to inundation by the one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown with in this zone.

- D. Zone AH: Areas subject to inundation by the one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.
  - E. Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.
  - F. Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.
- (2) **Accessory structure** (appurtenant structure) means a structure with a floor area 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.
- (3) **Addition** (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

- (4) **Appeal** means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.
- (5) **Area of shallow flooding** means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (6) **Base Flood** means the flood having a one percent chance of being equaled or exceeded in any given year.
- (7) **Base Flood Elevation (BFE)** means the elevation of the one-percent annual chance flood.
- (8) **Basement** means that portion of a structure having its floor sub-grade (below ground level) on all sides.
- (9) **Boundary River** means the part of the Ohio River that forms the boundary between Kentucky and Indiana.
- (10) **Boundary River Floodway** means the floodway of a boundary river.
- (11) **Building** - see "Structure."
- (12) **Community** means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.
- (13) **Community Rating System (CRS)** means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.
- (14) **Critical facility** means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.
- (15) **D Zone** means unstudied areas where flood hazards are undetermined, but flooding is possible. Flood insurance is



available in participating communities but is not required by regulation in this zone.

- (16) **Development** means any man-made change to improved or unimproved real estate including but not limited to:
- A. construction, reconstruction, or placement of a structure or any addition to a structure;
  - B. installing a manufactured home on a site, preparing a site for a manufactured home or installing recreational vehicle on a site for more than 180 days;
  - C. installing utilities, erection of walls and fences, construction of roads, or similar projects;
  - D. construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
  - E. mining, dredging, filling, grading, excavation, or drilling operations;
  - F. construction and/or reconstruction of bridges or culverts;
  - G. storage of materials; or
  - H. any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction or permanent structures.

- (17) **Elevated structure** means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).
- (18) **Elevation Certificate** is a certified statement that verifies a structure's elevation information.
- (19) **Emergency Program** means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

- (20) **Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.
- (21) **Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for serving the lots on which the manufactured homes are to be affixed (including the installation of utilities, construction of streets, an either final site grading or the pouring of concrete pads).
- (22) **FEMA** means the Federal Emergency Management Agency.
- (23) **Flood** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.
- (24) **Flood Boundary and Floodway Map (FBFM)** means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.
- (25) **Flood Insurance Rate Map (FIRM)** means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
- (26) **Flood Insurance Study (FIS)** is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.
- (27) **Flood Prone Area** means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See Flood)
- (28) **Flood Protection Grade (FPG)** is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (See "Freeboard")

- (29) **Floodplain** means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.
- (30) **Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.
- (31) **Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.
- (32) **Floodproofing (dry floodproofing)** is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.
- (33) **Floodproofing certificate** is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.
- (34) **Floodway** is the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

- (35) **Freeboard** means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.
- (36) **Fringe** is those portions of the floodplain lying outside the floodway.
- (37) **Hardship** (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.
- (38) **Highest adjacent grade** means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.
- (39) **Historic structure** means any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
- (40) **Increased Cost of Compliance (ICC)** means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997 will include ICC coverage.
- (41) **Letter of Final Determination (LFD)** means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this

six-month period unless the community has previously incorporated an automatic adoption clause.

(42) **Letter of Map Change (LOMC)** is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F). The definitions are presented below:

- A. Letter of Map Amendment (LOMA) means an amendment to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.
- B. Letter of Map Revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.
- C. Letter of Map Revision Based on Fill (LOMR-F) means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

(43) **Lowest adjacent grade** means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

(44) **Lowest floor** means the lowest elevation described among the following:

- A. The top of the lowest level of the structure.
- B. The top of the basement floor.
- C. The top of the garage floor, if the garage is the lowest level of the structure.
- D. The top of the first floor of a structure elevated on pilings or pillars.
- E. The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:

- i. the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;
  - ii. the total net area of all openings shall be at least one (1) square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and
  - iii. such enclosed space shall be usable solely for the parking of vehicles and building access.
- (45) **Manufactured home** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."
- (46) **Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- (47) **Market value** means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.
- (48) **Mitigation** means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is two fold: to protect people and structures, and to minimize the cost of disaster response and recovery.
- (49) **National Flood Insurance Program (NFIP)** is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

- (50) **National Geodetic Vertical Datum (NGVD) of 1929** as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.
- (51) **New construction** means any structure for which the "start of construction" commenced after the effective date of the community's first floodplain ordinance.
- (52) **New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.
- (53) **North American Vertical Datum of 1988 (NAVD88)** as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.
- (54) **Obstruction** includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across, or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.
- (55) **One-percent annual chance flood** is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory Flood".
- (56) **Physical Map Revision (PMR)** is an official republication of a community's FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

- (57) **Public safety and nuisance** means anything which is injurious to the safety or health of an entire community, neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.
- (58) **Recreational vehicle** means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as a quarters for recreational camping, travel, or seasonal use.
- (59) **Regular program** means the phase of the community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.
- (60) **Regulatory flood** means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in 7.06.040(b) of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood" and "100-Year Flood".
- (61) **Repetitive loss** means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.
- (62) **Section 1316** is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.
- (63) **Special Flood Hazard Area (SFHA)** means those lands within the jurisdictions of the City subject to inundation by the regulatory flood. The SFHAs of the City of Cannelton are



generally identified as such on the Perry County, Indiana and Incorporated Areas Flood Insurance Rate Map dated August 17, 2015, as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1-A30, AH, AR, A99, or AO).

- (64) **Start of Construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement or permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (65) **Structure** means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home or prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.
- (66) **Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (67) **Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work preformed. The term does not include improvements of structures to correct existing

violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

- (68) **Suspension** means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.
- (69) **Variance** is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.
- (70) **Violation** means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.
- (71) **Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.
- (72) **X Zone** means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.
- (73) **Zone** means a geographical area shown on a FIRM that reflects the severity or type of flooding in the area.
- (74) **Zone A** (see definition for A zone)
- (75) **Zone B, C, and X** means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not

required by regulation in these zones. (Zone X is used on new and revised maps in place of Zone B and C.) (Ord. 2015-11, S7.06.020, July 15, 2015) (Ord. 2005-20, Article 2, Oct. 24, 2005) (96-16, S7.06.010(c), Dec. 30, 1996) (Ord. 92-02, S3, 1992)

#### **7.06.030 General Provisions.**

(a) Lands to Which This Ordinance Applies.

This ordinance shall apply to all SFHA's and known flood prone areas within the jurisdiction of the City of Cannelton. (Ord. 2015-11, S7.06.030(a), July 15, 2015) (Ord. 2005-20, Article 3, SA, Oct. 24, 2005)

(b) Basis for Establishing Regulatory Flood Data.

This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below.

- (1) The regulatory flood elevation floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Cannelton shall be delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Perry County, Indiana and Incorporated Areas and the corresponding Flood Insurance Rate Map dated August 17, 2015 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.
- (2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the City of Cannelton, delineated as an "A Zone" on the Perry County, Indiana and Incorporated Areas Flood Insurance Rate Map dated August 17, 2015 as well as any future updates, amendments or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, the data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in

the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

- (4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA. (Ord. 2015-11, S7.06.030(b), July 15, 2015) (Ord. 2005-20, Article 3, SB, Oct. 24, 2005) (Ord. 96-16, S7.06.010(c), Dec. 30, 1996) (Ord. 92-02, S5, 1992)
- (c) Establishment of Floodplain Development Permit.  
A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard. (Ord. 2015-11, S7.06.030(c), July 15, 2015) (Ord. 2005-20, Article 3, SC, Oct. 24, 2005)
- (d) Compliance.  
No structure shall hereafter be located, extended, converted, or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations. (Ord. 2015-11, S7.06.030(d), July 15, 2015) (Ord. 2005-20, Article 3, SD, Oct. 24, 2005)
- (e) Abrogation and Greater Restrictions.  
This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2015-11, S7.06.030(e), July 15, 2015) (Ord. 2005-20, Article 3, SE, Oct. 24, 2005) (Ord. 96-16, S7.06.010(m), Dec. 30, 1996) (Ord. 92-02, S13, 1992)
- (f) Discrepancy between Mapped Floodplain and Actual Ground Elevations.
  - (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground

elevations, the elevation provided on the profiles shall govern.

- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA. (Ord. 2015-11, S7.06.030(f), July 15, 2015) (Ord. 2005-20, Article 3, SF, Oct. 24, 2005)

(g) Interpretation.

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 2015-11, S7.06.030(g), July 15, 2015) (Ord. 2005-20, Article 3, SG, Oct. 24, 2005)

(h) Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the City of Cannelton, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder. (Ord. 2015-11, S7.06.030(h), July 15, 2015) (Ord. 2005-20, Article 3, SH, Oct. 24, 2005) (Ord. 96-16, S7.06.010(k), Dec. 30, 1996) (Ord. 92-02, S11, 1992)

(i) Penalties for Violation.

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of Cannelton.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Floodplain Administrator shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the City from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible. (Ord. 2015-11, S7.06.030(i), July 15, 2015) (Ord. 2005-20, Article 3, SI, Oct. 24, 2005) (Ord. 96-16, S7.06.010(l), Dec. 30, 1996) (Ord. 92-02, S12, 1992)

#### **7.06.040 Administration.**

- (a) Designation of Administrator.  
The Common Council of the City of Cannelton hereby appoints the Zoning Administrator to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator. (Ord. 2015-11, S7.06.040(a), July 15, 2015) (Ord. 2005-20, Article 4, SA, Oct. 24, 2005)
- (b) Permit Procedures.  
Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:
  - (1) Application Stage.
    - A. A description of the proposed development;
    - B. Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams;
    - C. A legal description of the property site;
    - D. A site development plan showing existing and proposed development locations and existing and proposed land grades;

- E. Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in National Geodetic Vertical Datum (NAVD)88 or NGVD;
- F. Elevation (in NAVD88 or NGVD) to which any non-residential structure will be floodproofed;
- G. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See 7.06.040(c)(6) for additional information.

(2) Construction Stage.

Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator a certification of the NAVD88 or NGVD elevation of the lowest floor, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. The Floodplain Administrator shall review the lowest floor elevation survey data submitted. The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project. Any work undertaken prior to submission of the elevation certification shall be at the applicant's risk.

Upon establishment of the floodproofed elevation of a floodproofed structure, it shall be the duty of the applicant to submit to the Floodplain Administrator a floodproofing certificate. Certification shall be prepared by or under the direct supervision of a registered professional engineer and certified by same. (The Floodplain Administrator shall review the floodproofing certification submitted.) The applicant shall correct any deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the floodproofing certification or failure to make correction required shall be cause to issue a stop-work order for the project.

(3) Finished Construction.

Upon completion of construction, an elevation certification which depicts the “as-built” lowest floor elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, floodproofing certification is required to be submitted by the applicant to the Floodplain Administrator. (Ord. 2015-11, S7.06.040(b), July 15, 2015) (Ord. 2005-20, Article 4, SB, Oct. 24, 2005)

(c) Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but not be limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied.
- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to 7.06.050(e) and (g) (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit.
- (5) Maintain and track permit records involving additions and improvements to residences located in the floodway.
- (6) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (7) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data,



SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and "as-built" elevation and floodproofing data for all buildings constructed subject to this ordinance.

- (8) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (9) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (10) Review certified plans and specifications for compliance.
- (11) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with 7.04.040(b).
- (12) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with 7.06.040(b).
- (13) Stop Work Orders.
  - A. Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
  - B. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (14) Revocation of Permits.
  - A. The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

- B. The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance. (Ord. 2015-11, S7.06.040, S(c), July 15, 2015) (Ord. 2005-20, Article 4, SC, Oct. 24, 2005) (Ord. 96-16, S7.06.010(d), Dec. 30, 1996) (Ord. 92-02, S4, 1992)

#### **7.06.050 Provisions for Flood Hazard Reduction.**

(a) General Standards.

In all SFHAs and known flood prone areas the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance. (Ord. 2015-11, S7.06.050(a), July 15, 2015) (Ord. 2005-20, Article 5, SA, Oct. 24, 2005)

(b) Specific Standards.

In all SFHAs, the following provisions are required:

- (1) In addition to the requirements of 7.06.050(a), all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
  - A. Construction or placement of any new structure having a floor area greater than 400 square feet.
  - B. Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).
  - C. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the value of the structure (excluding the value of the land) before damaged occurred.
  - D. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
  - E. Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.

- F. Reconstruction or repairs made to a repetitive loss structure.
- G. Addition or improvement made to any existing structure with a previous addition or improvement constructed since the community's first floodplain ordinance.

(2) Residential Structures.

New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of 7.06.050(b)(4).

(3) Non-Residential Structures.

New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of 7.06.050(b)(4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

- A. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in 7.06.040(c)(12).

- B. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(4) Elevated Structures.

New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

- A. Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every square foot of enclosed area).
- B. The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening whichever is higher.
- C. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- D. Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- E. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- F. The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

(5) Structures Constructed on Fill.

A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:

- A. The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.
- B. The fill shall extend 10 feet beyond the foundation of the structure before sloping below the BFE.
- C. The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.
- D. The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- E. The top of the lowest floor including basements shall be at or above the FPG.

(6) Standards for Manufactured Homes and Recreational Vehicles.

Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

- A. These requirements apply to all manufactured homes to be placed on a site outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood:
  - i. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- ii. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in 7.06.050(b)(4).
  - iii. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.
- B. These requirements apply to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood:
  - i. The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
  - ii. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in 7.06.050(b)(4).
  - iii. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.
- C. Recreational vehicles placed on a site shall either:
  - i. be on site for less than 180 days;
  - ii. be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices,

and has no permanently attached additions);  
or

- iii. meet the requirements for "manufactured homes" as stated earlier in this section.

(7) Accessory Structures.

Relief to the elevation or dry floodproofing standards may be granted for accessory structures. Such structures must meet the following standards:

- A. Shall not be used for human habitation.
- B. Shall be constructed of flood resistant materials.
- C. Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.
- D. Shall be firmly anchored to prevent flotation.
- E. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.
- F. Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in 7.06.050(b)(4).

(8) Above Ground Gas or Liquid Storage Tanks.

All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement. (Ord. 2015-11, S7.06.050(b), July 15, 2015) (Ord. 2005-20, Article 5, SB, Oct. 24, 2005) (Ord. 96-16, Dec. 30, 1996) (Ord. 92-02, S8, 1992)

(c) Standards for Subdivisions Proposals.

- (1) All subdivisions proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivisions proposals shall have adequate drainage provided to reduce exposure to flood hazards, and.



- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres.
  - (5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.
  - (6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders). (Ord. 2015-11, S7.06.050(c), July 15, 2015) (Ord. 2005-20, Article 5, SC, Oct. 24, 2005) (Ord. 96-16, S7.06.010(i), Dec. 30, 1996) (Ord. 92-02, S9, 1992)
- (d) Critical Facility.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical Facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible. (Ord. 2015-11, S7.06.050(d), July 15, 2015) (Ord. 2005-20, Article 5, SD, Oct. 24, 2005)

- (e) Standards for Identified Floodways.

Located within SFHAs, established in 7.06.040(b), are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in a floodway. This includes land preparation activities such as filling, grading, clearing, and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of

non-substantial addition/improvement to a residence in a non-boundary river floodway without obtaining a permit for construction in a floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources.)

No action shall be taken by the Floodplain Administrator until a permit or letter of authorization (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in 7.06.050 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

No development shall be allowed which acting alone or in combination with existing or future development, that will adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse affect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

For all projects involving channel modifications or fill (including leaves) the City shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44CFR 65.12. (Ord. 2015-11, S7.06.050(e), July 15, 2015) (Ord. 2005-20, Article 5, SE, Oct. 24, 2005)

(f) Standards for Identified Fringe.

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in 7.06.050 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG. (Ord. 2015-11, S7.06.050(f), July 15, 2015) (Ord. 2005-20, Article 5, SF, Oct. 24, 2005)

(g) Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringes.

- (1) Drainage area upstream of the site is greater than one square mile:

If the site is an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway (including letters of authorization) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper permit for construction in a floodway (including letters of authorization) permit or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in 7.06.050 of this ordinance have been met.

- (2) Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in 7.06.050 of this ordinance have been met.

- (3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the regulatory flood more than 0.14 of one foot and shall not increase flood damages or

potential flood damages. (Ord. 2015-11, S7.06.050(g), July 15, 2015) (Ord. 2005-20, Article 5, SG, Oct. 24, 2005)

- (h) Standards for Flood Prone Areas. All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per 7.06.050. (Ord. 2015-11, S7.06.050(g), July 15, 2015)

#### **7.06.060 Variance Procedures.**

- (a) Designation of Variance and Appeals Board.  
The Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance. (Ord. 2015-11, S7.06.060(a), July 15, 2015) (Ord. 2005-20, Article 6, SA, Oct. 24, 2005)
- (b) Duties of Variance and Appeals Board.  
The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Perry County Circuit Court. (Ord. 2015-11, S7.06.060(b), July 15, 2015) (Ord. 2005-20, Article 6, SB, Oct. 24, 2005)
- (c) Variance Procedures.  
In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;
  - (1) The danger of life and property due to flooding or erosion damage.
  - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - (3) The importance of the services provided by the proposed facility to the community.
  - (4) The necessity to the facility of a waterfront location, where applicable.
  - (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

- (6) The compatibility of the proposed use with existing and anticipated development.
  - (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
  - (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
  - (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets, and bridges. (Ord. 2015-11, S7.06.060(c), July 15, 2015) (Ord. 2005-20, Article 6, SC, Oct. 24, 2005)
- (d) Conditions for Variances.
- (1) Variances shall only be issued when there is:
    - A. A showing of good and sufficient cause.
    - B. A determination that failure to grant the variance would result in exceptional hardship.
    - C. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
  - (2) No variance for a residential use within a floodway subject to 7.06.050, Section (e) or Section (g)(1) of this ordinance may be granted.
  - (3) Any variance granted in a floodway subject to 7.06.050, Section (e) or Section (g)(1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
  - (4) Variances to the Provisions for Flood Hazard Reduction of 7.06.050(b), 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.

- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
  - (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See 7.06.060(e)).
  - (8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See 7.06.060(e)). (Ord. 2015-11, S7.06.060(d), July 15, 2015) (Ord. 2005-20, Article 6, SD, Oct. 24, 2005) (Ord. 96-16, S7.06.010(j), Dec. 30, 1996) (Ord. 92-02, S10, 1992)
- (e) Variance Notification.  
Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the flood protection grade shall be given written notice over the signature of a community official that:
- (1) The issuance of a variance to construct a structure below the flood protection grade will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - (2) Such construction below the flood protection grade increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance. (Ord. 2015-11, S7.06.060(e), July 15, 2015) (Ord. 2005-20, Article 6, SE, Oct. 24, 2005)

(f) Historic Structure.

Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure. (Ord. 2015-11, S7.06.060(f), July 15, 2015) (Ord. 2005-20, Article 6, SF, Oct. 24, 2005)

(g) Special Conditions.

Upon the consideration of the factors listed in 7.06.060, and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance. (Ord. 2015-11, S7.06.060(g), July 15, 2015) (Ord. 2005-20, Article 6, SG, Oct. 24, 2005)

**7.06.070 Severability.**

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance. (Ord. 2015-11, S7.06.070, July 15, 2015)

**7.06.080 Effective Date.**

This ordinance shall be in full force and effect on August 17, 2015.

Passed by the Common Council of the City of Cannelton, Indiana on the 15<sup>th</sup> day of July, 2015. (Ord. 2015-11, S7.06.080, July 15, 2015)







# Federal Emergency Management Agency

Washington, D.C. 20472

IA-RA-TO:198

THIS IS A SPECIAL NOTICE REGARDING THE CONVERSION FROM THE EMERGENCY TO THE REGULAR PROGRAM, WHICH SHOULD BE ATTACHED TO THE MAP FOR:

<u>180195</u>	<u>Perry County(Uninc. Areas)</u>	<u>Perry</u>	<u>IN</u>
Community Number	Community Name & Type	County Name	State
<u>April 24, 1981</u>	<u>A</u>	<u>November 1, 1995</u>	<u>B</u>
Flood Hazard	Old	Regular Program Entry and Initial	New
Boundary Map Date	Suffix	Flood Insurance Rate Map Date	Suffix

This community will be converted to the Regular Program of the National Flood Insurance Program, effective as indicated above. This action has the effect of converting the Flood Hazard Boundary Map (FHBM), which is referenced above, to a Flood Insurance Rate Map (FIRM). The Federal Insurance Administration does not intend to republish the FHBM as a FIRM at this time. Therefore, for insurance application and rating purposes please note that the map suffix has been advanced from that shown on the FHBM to the next letter shown above. Also note that the Special Flood Hazard Areas, which is the shaded area on the map, is designated Zone A and all other areas are Zone C. The conversion of a community to the Regular Program affords additional limits of insurance coverage. If the above is unclear, please call (800) 638-6620 for more details.

YOU ARE ONLY BEING SENT ONE COPY OF THE NOTICE TO SAVE PRINTING, DISTRIBUTION AND POSTAGE. YOU MAY REPRODUCE THE NOTICE AS NEEDED.

FOR YOUR CONVENIENCE, PLEASE PERMANENTLY MARK YOUR COPY OR COPIES OF THE APPLICABLE FHBM AS A FIRM WITH THE NEW EFFECTIVE DATE AND SUFFIX.

OLD FHBM			NEW FIRM		
PANEL NO:	SUFFIX	DATE	PANEL NO:	SUFFIX	DATE
0000		04/24/81	0000		11/01/95
0001	A	04/24/81	0001	B	11/01/95
0002	A	04/24/81	0002	B	11/01/95
0003	A	04/24/81	0003	B	11/01/95
0004	A	04/24/81	0004	B	11/01/95
0005	A	04/24/81	0005	B	11/01/95
0006	A	04/24/81	0006	B	11/01/95
0007	A	04/24/81	0007	B	11/01/95

CITY OF CANNELTON

Application For  
Improvement Location Permit

TYPE OF WORK

- ☐ New Building  
☐ Addition

Application No. \_\_\_\_\_

Date \_\_\_\_\_

OWNER'S NAME \_\_\_\_\_ PHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_

LEGAL DESCRIPTION \_\_\_\_\_

KIND OF STRUCTURE \_\_\_\_\_ No. of Parking Spaces \_\_\_\_\_ COST \$ \_\_\_\_\_

Size of Lot \_\_\_\_\_ Zone \_\_\_\_\_ Size of Building, sq.ft. \_\_\_\_\_

Height in Stories and Feet \_\_\_\_\_ No. of Bedrooms \_\_\_\_\_ No. of Baths \_\_\_\_\_

Present Use of Premises \_\_\_\_\_ Proposed Use \_\_\_\_\_

Does Proposed Improvement lie in A Special Flood Hazard Area (100 year  
Floodplain)? ☐ yes ☐ no

If yes, certified "as built" lowest floor elevation of structure (including  
basement): \_\_\_\_\_

EACH UTILITY SERVICE MUST BE LOCATED ON YOUR DRAWING WITH MEASUREMENTS, ETC:

Electric Service \_\_\_\_\_ Size Service Amps. \_\_\_\_\_

(Public, Private, etc.)

Secondary Voltage \_\_\_\_\_ Three Phase or Single \_\_\_\_\_

Water System \_\_\_\_\_ Size Service and Meter \_\_\_\_\_

(Public, Private, etc.)

Private Fire Hydrants No. \_\_\_\_\_ Sprinkler System \_\_\_\_\_

Wastewater System \_\_\_\_\_ Size of Service \_\_\_\_\_

(Public, Private, etc.)

No. of Wastewater Drains \_\_\_\_\_ Grease Trap \_\_\_\_\_ Garbage Grinder \_\_\_\_\_

We advise that a check flap valve be installed on service after all drains  
have come to one effluent line. Yes ☐ No ☐

Building To Be Heated By \_\_\_\_\_ Air Conditioner \_\_\_\_\_

Gas System \_\_\_\_\_ Size Service and Meter \_\_\_\_\_

(Public, Private, etc.)

Sump Pump ☐ Yes ☐ No

If yes, where does effluent go? \_\_\_\_\_ stormsewer \_\_\_\_\_ sanitary sewer

CONTRACTORS

NAME

ADDRESS

\*\*PLEASE READ BELOW

General \_\_\_\_\_

Electrical \_\_\_\_\_

Plumbing \_\_\_\_\_

Gas \_\_\_\_\_

Above information certified to be true and correct:

Date \_\_\_\_\_ Applicant Sign \_\_\_\_\_

FOR OFFICE USE ONLY

IMPROVEMENT LOCATION PERMIT NO. \_\_\_\_\_ ISSUED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_

PERMIT FEE \$ \_\_\_\_\_

PAID \_\_\_\_\_

(Date)

Zoning Administrator

SITE PLAN: INCLUDE LOT SIZE, ALL SET BACK DISTANCES, STREET NAMES, AND  
IMPROVEMENT DIMENSIONS.

\*\*No building materials, supplies or equipment shall be stored or  
placed on any thoroughfare. No construction debris, excavation  
dirt or refuse, or any other materials or substances emanating from  
this construction site shall be permitted to remain overnight on  
any public thoroughfare, and shall be cleaned and cleared from the  
thoroughfare, at the end of each workday.

## Chapter 7.07

### NONCONFORMING USE, LOT AND STRUCTURE REGULATIONS

#### Sections:

- 7.07.010 Nonconforming Use Regulations
- 7.07.020 Nonconforming Structure and Building Regulations
- 7.07.030 Zoning Administrator Review and Special Uses
- 7.07.040 Prohibition on Creation of Non-Conforming Lots

#### 7.07.010 Nonconforming Use Regulations.

##### (a) Definition

A nonconforming use is an active and actual use of land or structures, or both; legally established prior to the effective date of this Title or subsequent applicable amendment thereto which has continued the same use to the present, and which would not be permitted under the current terms of this Title.

##### (b) Continuance of a Nonconforming Use

Any nonconforming use lawfully existing upon the effective date of this Title may be continued at the size and in a manner of operation existing upon such date, except as specified in this Section.

##### (c) Modification of a Nonconforming Use

A nonconforming use shall not be expanded, or changed to another nonconforming use unless such modification would make the nonconforming use have a more desirable effect in terms of implementing the purposes of this Title (as determined by the Zoning Administrator). If such a modification is permitted, said use shall not be modified back to the original nonconforming use, or to any other nonconforming use which does not better accomplish the purposes of this Title. Permission to modify in such a manner shall require that the lot be brought into conformance wherever reasonable and feasible, or a schedule to bring the lot into conformance with the provisions of this Title be developed. For example, additional parking shall be provided, nonconforming signs shall be removed, etc. as a condition of approval of such a modification.

##### (d) Discontinuance of a Nonconforming Use

When any nonconforming use of any structure or land is discontinued for a period of twelve (12) months, or is changed into

a conforming use, any future use of said structure or land shall be in conformance with the provisions of this Title.

(e) Maintenance of a Nonconforming Use

The normal maintenance of a structure or land containing or related to a nonconforming use is permitted, including necessary repairs and incidental alterations which do not exacerbate the adverse impacts of the nonconforming use in relation to the purposes of this Title. In no instance shall said repairs exceed fifty (50) percent of the value of said structure or property prior to said repairs. See Section 7.07.030 below for reconstruction of structures and buildings for permitted and nonconforming uses.

(f) Exceptions for Pre-Existing Residential Structures in the GC - General Commercial District

(1) Mixed Use Nature of General Commercial District

The General Commercial district exists today as a mixed use district with several residential land uses mixed with the more intense commercial land uses along State Highway 66. It is the intent of this Title to gradually create a more cohesive and therefore more viable General Commercial district in this area. However, it is not the intent of this Title to create dormant structures designed for residential use which may not easily convert to commercial use or be reconstructed as commercial structures. The impact of these vacancies on the district and overall property values warrants that these residential structures be given special consideration until the market can bear their gradual transition to commercial uses.

(2) Exception for Residential Structures

Any building lawfully existing upon the effective date of this Title used, previously used, or originally designed for a residential use, may be used for a residential use, with said residential use considered a permitted use in the General Commercial District. No new residential uses in structures other than those defined in this section, or construction of new residential buildings or structures shall be permitted in the General Commercial District without the approval of a Special Use by the Board of Zoning Appeals. (Ord. 99-5, May 24, 1999) (Ord. 96-02, S1, March 25, 1996)

## **7.07.020 Nonconforming Structure and Building Regulations**

### **(a) Continuance of a Nonconforming Structure**

Any structure or building lawfully existing upon the effective date of the Title may be continued in the size and in a manner of operation existing upon such date, except as hereafter specified.

### **(b) Permitted Alterations to Nonconforming Structures**

Alterations and expansions to a building or structure containing a permitted use are permitted if they do not further encroach on the nonconformity. For example, a structure containing a lawful use which does not meet the front yard building setback, may build a room addition in the rear if it meets all setbacks. However, such alteration may be conditioned upon alleviation or partial correction of any one (1) or more other nonconforming aspects of the structure or use where feasible and reasonable and to an extent that parallels the extent of the request to alter or expand. This subsection in no way is intended to permit a building containing a nonconforming use to be expanded or altered if such an expansion would intensify the nonconforming use.

### **(c) Maintenance of a Nonconforming Structure**

#### **(1) Normal Maintenance**

Normal maintenance of a nonconforming structure or building is permitted, including necessary nonstructural repairs and incidental alterations which do not extend, enlarge, or intensify the nonconformity or nonconforming use.

#### **(2) Unsafe Buildings and Structures**

Nothing in this Title shall preclude the Building Inspector or Zoning Administrator from remedial or enforcement actions when a nonconforming structure or building is declared unsafe.

#### **(3) Exceptions for Residential Garages**

The addition of a garage to an existing nonconforming residential use or the alteration or replacement of an existing garage shall not constitute enlargement or intensification of the nonconforming use or structure so long as the

construction does not exacerbate the nonconformity or in the case of new construction, create a nonconformity.

(4) Exemptions for Replacement or Upgraded Mobile Homes

The replacement of an existing mobile home with an upgraded version in the Multi-Family Zoning district, in compliance with the provisions set out in Section 7.04.050(b), shall not constitute an enlargement or intensification of nonconforming use or structure so long as the replacement will enhance, not detract, nearby land uses. (Ord. 2005-09, June 27, 2005)

(d) Modification of a Nonconforming Structure

When any lawful nonconforming structure or building in any district is modified so as to be in conformance with the provisions of this Title, any future modification of said structure or building shall be in conformance with the provisions of this Title.

(e) Reconstruction of a Nonconforming Structure

Whenever a lawful nonconforming structure or building has been damaged by fire, flood, wind, explosion, earthquake, war, riot, unlawful act, or Act of God, it may be reconstructed and used as before if it is constructed within one (1) year after such calamity, unless the damage to said structure or building equals or exceeds fifty (50) percent of its assessed value. In such cases, the reconstruction shall be limited to uses permitted by the provisions of this Title (unless the ability to re-establish a nonconforming use is specifically granted by the Board of Zoning Appeals as a Special Use).

(f) Permits Issued for Structures Prior to the Effective Date of this Title

Any structure or building for which a building permit has been lawfully granted prior to the effective date of this Title, which will become nonconforming hereunder, may be constructed in accordance with the approved permits and plans, provided construction is started within one hundred eighty (180) calendar days of the effective date of this Title and provided that construction is completed within seven hundred thirty (730) days of the effective date of this Title. Said structure or building shall thereafter be a legal nonconforming structure or building. (Ord. 96-02, S1, March 25, 1996)

#### **7.07.030 Zoning Administrator Review and Special Uses.**

The intent of this Chapter is to prohibit the expansion or alteration of non-conforming uses and structures. However, these regulations shall in no way be construed as limiting a property owner's desire to improve a property or use which does not conform in one or more ways with the requirements of this Title. As indicated above, changes to uses and structures may be made in certain instances subject to the review of the Zoning Administrator. However, any changes to nonconforming uses and structures shall require as many of the nonconformities that exist on a lot to be abated or mitigated. The Zoning Administrator shall reasonably require correction of such nonconformities to an extent or number that is related to the request to alter and expand. For example, should a nonconforming use wish to erect a new pole sign, it may be reasonable to have some of the nonconforming wall signs removed, but would perhaps not be reasonable to require paving for the four (4) parking spaces needed to conform with the minimum requirements for that use. However, if a permitted use wishes to add a 800 square foot, two room building addition, it may be reasonable to require them to pave their driveway entrance, provide the needed parking, and provide bufferyard landscaping along the lot line that adjoins the single family home next door. Whenever such conditions cannot be agreed upon between the property owner seeking the alteration or expansion and the Zoning Administrator, the matter shall be referred to the Board of Zoning Appeals for Special Use review for expansion or alteration of a nonconforming use or structure. (Ord. 96-02, S1, March 25, 1996)

#### **7.07.040 Prohibition on Creation of Non-Conforming Lots.**

No lot or combination of lots and parcels may be further used, sold, or divided after the effective date of this Title in a manner which creates a lack of conformance with one or more of the requirements established herein, including lot width and area requirements. Blanket variances as authorized in Section 7.05.060 apply only to lots in their configuration as of the effective date of this Title. (Ord. 96-02, S1, March 25, 1996)

## Chapter 7.08

### PERFORMANCE STANDARDS

#### Sections:

7.08.010	Purpose
7.08.020	Off-Street Parking and Traffic Circulation Standards
7.08.030	Off-Street Loading Standards
7.08.040	Access Standards
7.08.050	Visibility Standards
7.08.060	Exterior Lighting and Glare Standards
7.08.070	Noise Standards
7.08.080	Odor and Heat Standards
7.08.090	Fire and Explosion Standards
7.08.100	Drainage Standards
7.08.110	Bufferyard and Landscaping Regulations
7.08.120	Administration & Enforcement of Performance Standards

**7.08.010 Purpose.** The purpose of this Chapter is to provide standards relating to the performance of uses and activities within zoning districts. These standards are intended to prevent the creation of nuisances and to provide compatibility of uses between districts, particularly at the boundaries. The performance standards herein are designed to further the purposes of this Title as outlined in Section 7.01.050. These performance standards apply to uses established after the effective date of this Title unless specifically noted herein. (Ord. 96-02, S1, March 25, 1996)

#### **7.08.020 Off-Street Parking and Traffic Circulation Standards.**

##### (a) Depiction on Required Site Plan

Any and all parking and traffic circulation areas proposed to be located on the subject property shall be depicted as to their location and configuration on the site plan required for the development of the subject property. A garage stall shall be considered a parking space. Parking spaces for any and all vehicles exceeding 18 feet in length shall be clearly indicated on said site plan.

##### (b) Use of Off-Street Parking Areas

The use of all off-street parking areas shall be limited to the parking of operable vehicles which are not for lease, rent, or sale unless the



lot is a vehicle sales lot. No storage of any kind shall be permitted unless shown on the approved site plan.

(c) Maintenance of Off-Street Parking and Traffic Circulation Areas

All off-street parking and traffic circulation areas shall be maintained in a dust-free condition at all times.

(d) Off-Street Parking and Traffic Circulation Design Standards

(1) Lighting

All off-street parking and traffic circulation areas serving 6 or more cars shall be lit so as to ensure the safe and efficient use of said areas during the hours of use.

(2) Access

Each required off-street parking space shall open directly upon an aisle or driveway that is wide enough and designed to provide a safe and efficient means of vehicular access to the parking space without backing or maneuvering a vehicle into a public right-of-way. All off-street parking and traffic circulation facilities shall be designed with an appropriate means of vehicular access to a street or alley, in a manner which least interferes with traffic movements.

(3) Parking Space Design Standards

Other than parking required to serve the handicapped, every and all provided off-street parking space shall comply with the minimum requirements of Table 3. All parking spaces shall have a minimum vertical clearance of at least seven (7) feet. A typical 90° parking stall shall be a minimum of nine (9) feet wide by eighteen and one-half (18.5) feet in length.

(e) Calculation of Minimum Required Parking Spaces:

(1) General Guidelines for Calculating Required Parking Spaces

A. Minimum Required Spaces

The requirements of Subsection (2), below, shall be used to determine the minimum required number of parking spaces which must be provided on the subject property.

B. Method of Calculation

Requirements are generally tied to the capacity of the use; the net floor area of the use; or the number of employees which work at the subject property during the largest work shift. The term "capacity" as used herein means the maximum number of persons that may be accommodated by the use as determined by its design or by State Building Code regulations, whichever number is greater. References herein to "employee(s) on the largest work shift" means the maximum number of employees working at the facility during a single given day, regardless of the time period during which this occurs, and regardless of whether any such person is a full-time employee. The largest work shift may occur on any particular day of the week or during a lunch or dinner period in the case of a restaurant.

C. Additional Business Vehicle Parking Required

In all cases, one (1) reserved parking space shall be provided for each vehicle used by the operation during business hours. Spaces shall be in addition to those required below.

D. Handicapped Parking

Handicapped parking shall be provided as required under Indiana Code 5-16-9 with one (1) parking space required for any facility having more than fifty (50) parking spaces with additional stalls required for larger facilities. Said stalls shall be a minimum of thirteen (13) feet in width and painted with blue lines.

(2) Minimum Off-Street Parking Requirements for Land Uses

Each land use shall provide sufficient off-street parking spaces to accommodate parking demand. Uses in the Downtown Residential and Downtown Commercial Districts shall provide parking per the following requirements wherever feasible. However, should the lot be too small to accommodate the required parking, the maximum number of stalls shall be provided (which may be none) without the necessity for a variance from these

standards. The following requirements shall be the minimum, for each land use:

A. Agricultural Land Uses

One (1) space per employee on the largest work shift.

B. Residential Land Uses

- i. Group or institutional housing:  
1 per every three (3) beds plus 1 per every 2 employees on maximum work shift
- ii. Single-family detached:  
0 spaces for lots 0 to 4,999 sq. ft. in area  
1 space for lots 5,000 to 6,999 sq. ft. in area  
2 spaces for lots 7,000+ sq. ft. in area
- iii. Other than above:  
1.5 for efficiency  
2 for 1 or 2 bedrooms  
3 for 3 or more bedrooms

C. Institutional Land Uses

Generally, one (1) space per three (3) expected patrons at maximum capacity for nonresidential uses unless noted below. See B. Residential Land Uses above for institutional housing parking requirements.

- i. Cemetery: one (1) space per employee, plus one (1) space per three (3) patrons to the maximum capacity of all indoor assembly areas, if present.
- ii. Church: one (1) space per five (5) seats at the maximum capacity.
- iii. College: one (1) space per staff member on the largest work shift, plus one (1) space per two (2) students of the largest class attendance period.
- iv. Commercial or Trade School: one (1) space per three (3) students, plus one (1) space per

employee (including faculty) at capacity class attendance period.

- v. Community or Recreation Center: one (1) space per 200 square feet of net floor area, or one (1) space per four (4) patrons to the maximum capacity, whichever is greater, plus one (1) space per employee on the largest work shift.
- vi. Elementary and Junior High: one (1) space per teacher and per staff member, plus one (1) space per two (2) classrooms.
- vii. Golf Course: 36 spaces per line nine (9) holes, plus one (1) space per employee on the largest work shift, plus fifty (50) percent of spaces otherwise required for any accessory uses (e.g., banquet facilities, restaurant).
- viii. Hospital: two (2) spaces per three (3) patient beds, plus one (1) space per staff doctor and each other employee on the largest work shift.
- ix. Library or Museum: one (1) space per 250 square feet of net floor area or one (1) space per four (4) seats to the maximum capacity, whichever is greater, plus one (1) space per employee on the largest work shift.
- x. Outdoor Public Recreational: one (1) space per four (4) expected patrons at maximum capacity (unless otherwise noted above).
- xi. Public Services: one (1) space per employee on the largest work shift, plus one (1) space per company vehicle normally stored or parked on the premises, plus one (1) space per 400 square feet of net square feet of office area.
- xii. Senior High: one (1) space per teacher and per staff member on the largest work shift, plus one (1) space per five (5) non-bused students.
- xiii. Swimming Pool: one (1) space per seventy-five (75) square feet of gross water area.

xiv. Tennis Court: three (3) spaces per court.

D. Commercial Land Uses

- i. Bed and Breakfast Establishment: one (1) space per bedroom, plus one (1) space for each employee on the largest work shift.
- ii. Commercial Animal Boarding: one (1) space per every 800 square feet of net floor area.
- iii. Day Care Center: one (1) space per five (5) children plus one (1) space for each employee on the largest work shift.
- iv. Funeral Homes: one (1) space per three (3) patron seats at maximum capacity, plus one (1) space per employee on largest work shift.
- v. Hotels, Motels Lodging: one (1) space per bedroom, plus one (1) space for each employee on the largest work shift.
- vi. Indoor Commercial Entertainment: one (1) space per every three (3) patron seats or lockers (whichever is greater); or one (1) space per three (3) persons at the maximum capacity of the establishment (whichever is greater).
- vii. Indoor Sales or Service: one (1) space per 200 square feet of net floor area.
- viii. Mini-Warehouse: one (1) space per each employee on largest work shift, if applicable.
- ix. Office: one (1) space per 200 square feet of net floor area.
- x. Outdoor Assembly: one (1) space for every three (3) patrons at maximum capacity.
- xi. Outdoor Commercial Entertainment: one (1) space for every three (3) patron seats at the maximum capacity of the establishment, or 1.5 spaces per campsite in campground.
- xii. Outdoor Sales or Service: one (1) space per 100 square feet of net floor area.

- xiii. Personal or Professional Service: one (1) space per 200 square feet of net floor area.
- xiv. Sexually-Oriented Use: one (1) space per 200 square feet of net floor area, or one (1) space per person at the maximum capacity of the establishment (whichever is greater).

E. Industrial Land Uses

One (1) space per each employee on the largest work shift. (Ord. 96-02, S1, March 25, 1996)

**Table 3:**  
**Parking Space Design Dimensions**  
(for nine (9) foot stalls at various angles in linear feet)

		<u>0°</u>	<u>45°</u>	<u>60°</u>	<u>90°</u>
A	Stall width, parallel to aisle	24.0	12.5	10.5	9.0
B	Stall length of line	----	25.0	22.0	18.5
C	Stall depth to wall	9.0	17.5	19.0	18.5
D	Stall depth, interlock	----	15.5	17.5	18.5
E	One-way aisle	12.0	13.0	18.0	24.0
F	Two-way aisle	24.0	24.0	24.0	24.0

#### **7.08.030 Off-Street Loading Standards.**

(a) Applicability

Any use which has a net floor area of 6,000 square feet or more, and which requires deliveries or makes shipments, shall provide off-street loading facilities in accordance with the regulations of this Section.

(b) Location

All loading berths shall be located twenty-five (25) feet or more from the intersection of two street right-of-way lines. Loading berths shall not be located within any required front yard setback area, or within any street side yard setback area. Access to the loading berth shall be located in conformance with Section 7.08.020. All loading areas shall be located on the private lot and shall not be located within, or so as to interfere with, any public right-of-way.

(c) Size of Loading Area

All loading berths shall be a minimum of fifty (50) feet in length and ten (10) feet in width, exclusive of aisles and maneuvering space. All required loading berths shall have a minimum vertical clearance of fourteen (14) feet.

(d) Access to Loading Area

Each loading berth shall be located so as to facilitate access to a public street or alley, and shall not interfere with other vehicular or pedestrian traffic per Section 7.08.040, and shall not interfere with the function of parking areas. In no instance shall loading areas rely on backing movements into public rights-of-way.

(e) Surfacing and Marking

All required loading areas shall be maintained in a dust-free condition at all times.

(f) Use of Required Loading Areas

The use of all required loading areas shall be limited to the loading and unloading of vehicles. Said area shall not be used to provide minimum required parking spaces.

(g) Depiction on Required Site Plan

Any and all required loading areas proposed to be located on the subject property shall be depicted as to their location and configuration on the site plan required for the development of the subject property.

(h) Calculation of Required Loading Spaces

(1) Commercial (except Offices), and Industrial Land Uses

One (1) loading berth shall be required for each building having a net floor area of 6,000 square feet to 29,999 square feet. For such uses located in buildings having a net floor area of 30,000 square feet or greater, an additional loading berth shall be required for any portion of each 50,000 square feet of net floor area in addition to the original 29,999 square feet.

(2) Institutional Non-Residential Land Uses

One (1) loading berth shall be required for each building having a net floor area of 6,000 square feet to 29,999 square feet. For such uses located in buildings having a net floor area of 30,000 square feet or greater, two (2) loading berths shall be required.

(3) Office Land Uses

One (1) loading berth shall be required for each building having a net floor area of 6,000 square feet to 99,999 square feet. For such uses located in buildings having a net floor area of 100,000 square feet or greater, an additional loading berth shall be required for any portion of each 100,000 square feet of net floor area in addition to the original 99,999 square feet. (Ord. 96-02, S1, March 25, 1996)

**7.08.040 Access Standards.**

(a) Permit Required

Each access point onto a public street or right-of-way shall have a permit issued by the City.

(b) Number of Access Points

(1) Each lot shall have not more than two (2) access points on any street frontage, subject to (2) below.



(2) In no instance shall any lot be permitted more than one (1) access point on any one street if its frontage on said street is less than 100 linear feet (as measured along the right-of-way line).

(c) Angle of Intersection with Public Right-of-Way

All access drives shall intersect with any public right-of-way at an angle of not less than 75 degrees, and shall intersect at an angle of 90 degrees wherever possible.

(d) Distance from Property Line

The distance from an access drive to the property line of an adjacent property shall not be less than five (5) feet, as measured along the right-of-way line.

(e) Width of Driveways

All access drives shall have a maximum width of twenty-four (24) feet or thirty (30) feet (as determined by the City), as measured along the right-of-way line.

(f) Traffic Control

The traffic generated by any use shall be channelized and controlled in a manner which avoids congestion on public streets and other safety hazards. Traffic into and out of all off-street parking, loading and traffic circulation areas serving six (6) or more parking spaces or any non-residential loading area shall be forward moving, with no backing into streets or pedestrian ways. Traffic control devices shall be required as determined by the City.

(g) Depiction on Required Site Plan

Any and all proposed access drives on the subject property shall be depicted as to their location and configuration on the site plan required for the development of the subject property.

(h) Paving of Access

In all zoning districts except the Agricultural and Countryside Residential districts, access approach areas located within a street right-of-way shall be paved to the satisfaction of the City with a hard, all-weather surface, and shall be maintained so as to prevent the transport of gravel, dirt, or other eroded material from the subject property into the right-of-way. (Ord. 96-02, S1, March 25, 1996)

#### **7.08.050 Visibility Standards.**

(a) Requirement

In order to provide a clear view of intersecting streets to motorists there shall be a triangular area of clear vision formed by the two (2) intersecting corner lot lines and a chord forming the third side of the triangle connecting a point on each lot line thirty (30) feet from the corner or intersection of the lot lines with each other. Within said triangular area, no signs, parking spaces, structures, opaque landscaping or earthwork obstructions between thirty (30) inches and nine (9) feet in height shall be permitted.

(b) Depiction on Required Site Plan

Any and all visibility triangles located on the subject property shall be depicted as to their location and configuration on the site plan required for the development of the subject property. (Ord. 96-02, S1, March 25, 1996)

#### **7.08.060 Exterior Lighting and Glare Standards.**

(a) Applicability

The requirements of this Section apply to all private exterior lighting within the jurisdiction of this Title except for lighting public rights-of-way and/or lighting on public property.

(b) Depiction on Required Site Plan

Any and all exterior lighting shall be depicted as to its location, orientation and configuration on the site plan required for the development of the subject property.

(c) Requirements

(1) Orientation of Fixture

In no instance shall an exterior lighting fixture be oriented so that the lighting element (or a transparent shield) is visible from a property located within a residential zoning district. The use of shielded luminaries and careful fixture placement is encouraged so as to facilitate compliance with this requirement.

(2) Flashing, Flickering and other Distracting Lighting

Flashing, flickering and/or other lighting which may distract motorists or imitate a traffic device are prohibited.

(3) Glare

No direct or sky-reflected glare, whether from floodlights or from temperature processes such as combustion or welding or otherwise, shall be permitted so as to be visible at the lot line of the subject property.

(4) Nonconforming Lighting

All lawful lighting fixtures which do not meet the standards of this section existing prior to the effective date of this Title shall be considered legal non-conforming uses. See Section 7.07.010. (Ord. 96-02, S1, March 25, 1996)

**7.08.070 Noise Standards.**

(a) Applicability

The requirements of this Section apply to all uses and activities which create detectable noise, except that these standards shall not apply to noise created during construction on the subject property, or by incidental traffic, parking, loading, maintenance or agricultural operations.

(b) Requirements

All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. In no event shall any objectionable noise radiated continuously from a facility be detectable in the surrounding residential areas. (Ord. 96-02, S1, March 25, 1996)

**7.08.080 Odor and Heat Standards.**

(a) Applicability

The requirements of this Section apply to all land uses and activities, except that these standards shall not apply to odors or heat created during construction on the subject property, or by incidental traffic, parking, loading, or maintenance operations. Public landfills and public sanitary sewage treatment plants shall be exempted from the requirements of this Section as essential public services.

(b) Odor

Except for food preparation and cooking odors emanating from residential land uses, and odors associated with property development and maintenance (such as construction, lawn care, and the painting and roofing of structures), no objectionable odor shall be created for periods exceeding a total of fifteen (15) minutes per any day which is detectable in the surrounding residential areas.

(c) Heat

There shall be no transmission of heat or heated air so as to be discernible (by a healthy observer such as the Zoning Administrator or a designee) at the lot line with adjoining residential uses. Solar energy systems regulated by State Code shall be entitled to the protections of its provisions.

State Law Reference: Section 36-7-2-8, Indiana Code. (Ord. 96-02, S1, March 25, 1996)

**7.08.090 Fire and Explosion Standards.**

(a) Applicability

The requirements of this Section apply to all land uses and activities.

(b) Standards

Any use involving materials which could decompose by detonation shall locate such materials not less than 400 feet from any residential zoning district except that this standard shall not apply to the storage or usage of liquefied petroleum or natural gas for normal residential or business purposes. All activities and storage of flammable and explosive materials at any point shall be provided with adequate safety and fire fighting devices in accordance with all fire prevention codes of the State of Indiana. (Ord. 96-02, S1, March 25, 1996)

**7.08.100 Drainage Standards.**

(a) Applicability

The requirements of this Section apply to all land uses and activities erected or developed after the effective date of this Title.

(b) Standards

No land shall be developed and no use shall be permitted that results in water runoff which causes property damage, a nuisance, and/or erosion on adjacent properties. Such runoff shall be properly conveyed to a public storm drain, drainageway or other such public drainage facility per the approval of the City. (Ord. 96-02, S1, March 25, 1996)

**7.08.110 Bufferyards and Landscaping Regulations.** Bufferyards are a combination of setbacks, fencing, and landscaping which serve to separate land uses from one another to ensure compatibility with land uses of different character. The following bufferyards shall be provided and maintained for all uses hereafter established:

(a) Non-Residential Uses Adjoining a Residential Zoning District

(1) Year Round Screening Required

For all non-residential uses which adjoin a residential zoning district a year round bufferyard shall be provided along the abutting property line of the adjoining residential property.

(2) Design

Screening shall consist of landscaping, berming, fencing, walls, or combinations thereof to form a continuous solid screen a minimum of six (6) feet in height.

(3) Fences Used in Bufferyards

No fencing installed along a common side property line with the adjoining residential property shall extend further toward the front property line than the required building setback of the adjoining residential zoning district. All fencing shall be commercial grade with the finished side of the fence facing outward.

(4) Height Differences Based on Topography

Heights of screens may be increased to a maximum of eight (8) feet or reduced to a minimum of four (4) feet based on topography changes between the proposed use and the

neighboring residential property per the determination of the Zoning Administrator.

(b) Additional Screening Required for Certain Uses

The Board of Zoning Appeals may require additional setbacks, screening, increase in fence heights, or similar design solutions to ensure compatibility between land uses and adjoining property. Bufferyards may be required by the Board of Zoning Appeals between certain land uses and adjoining uses not located in a residential zoning district. For example, a proposed heavy manufacturing use may be required to screen the use from the adjoining schoolyard or hospital even though the latter uses are located in a nonresidential zoning district. (Ord. 96-02, S1, March 25, 1996)

**7.08.120 Administration & Enforcement of Performance Standards.**

(a) Determination of Violations

Determinations necessary for administration and enforcement of performance standards set forth herein range from those which can be made with satisfactory accuracy by a reasonable person using normal senses and no mechanical equipment, to those requiring great technical competence and complex equipment for precise measurement. It is the intent of this Title that:

(1) Determinations by the Zoning Administrator

Where determinations can be made by the Zoning Administrator using equipment normally available to the City or obtainable without extraordinary expense, such determinations shall be so made before notice of violation is issued.

(2) Determinations Requiring Technical Expertise

Where technical complexity or extraordinary expense makes it unreasonable for the City to maintain the personnel or equipment necessary for making difficult or unusual determinations, procedures shall be available for causing corrections or apparent violations of performance standards, for protecting individuals from arbitrary, capricious, and unreasonable administration and enforcement of performance standard regulations, and for protecting the general public from unnecessary costs for administration and enforcement.

(3) Written Notice

The Zoning Administrator shall give written notice, by certified mail or other means, ensuring a signed receipt for such notice to the person or persons responsible for the alleged violations. The notice shall describe the particulars of the alleged violation and the reasons why the Zoning Administrator believes there is a violation in fact, and shall require an answer or correction of the alleged violation to the satisfaction of the Zoning Administrator. However, should the violation pose a great and immediate danger, the Zoning Administrator may initiate abatement of the violation in accordance with Section 7.10.070.

The notice shall state, and it is hereby declared, that failure to reply or to correct the alleged violation to the satisfaction of the administrative official within the time limit set constitutes admission of violation of the terms of this Title. The notice shall further state that upon request of those to whom it is directed, technical determination as described in this Title will be made, and that if violations as alleged are found, costs of such determinations shall be charged against those responsible for the violation, in addition to such other penalties as may be appropriate, but that if it is determined that no violation exists, the cost of the determination will be paid by the City.

(b) General Enforcement

Enforcement of the provisions of this Chapter shall be per the violations and penalties set forth in Section 7.10.070. (Ord. 96-02, S1, March 25, 1996)

## Chapter 7.09

### PROCEDURES

#### Sections:

7.09.010	Purpose
7.09.020	Text Amendments to the Zoning Ordinance or Text of the Comprehensive Plan
7.09.030	Amendment of the Official Zoning Map or Comprehensive Plan Land Use Map
7.09.040	Special Use Review
7.09.050	Variance Review
7.09.060	Appeals
7.09.070	Interpretations

**7.09.010 Purpose.** The purpose of this Chapter is to establish the procedures for the review and approval of zoning ordinance and comprehensive plan text amendments, zoning map and plan map amendments, special uses, variances, zoning interpretations by the Zoning Administrator, zoning appeals to the Board of Zoning Appeals. See Sections 7.06.010 and 7.06.020 for procedures regarding approval of activities in the floodplain or historic preservation district, respectively. See Section 7.10.030 for issuance of building permits. (Ord. 96-02, S1, March 25, 1996)

#### **7.09.020 Text Amendments to the Zoning Ordinance or Text of the Comprehensive Plan.**

##### (a) Application Requirements.

All applications for proposed amendments to this Title or the text of the Comprehensive Plan, shall be filed in the office of the Zoning Administrator and shall be accompanied by the following:

- (1) A copy of the portion of the current provisions of this Title or the Plan proposed to be amended, with said provisions clearly indicated in a manner which is reproducible with a photocopier;
- (2) A copy of the text which is proposed to replace the current text; and
- (3) Written justification for the proposed text amendment (the petitioner is advised to answer the questions in subsection (b) below).



(b) Review by Staff

- (1) The Zoning Administrator shall review the submittal in order to ensure that all required portions of the submittal are provided.
- (2) After acknowledgment of a complete submittal, City Staff shall undertake a review of the submittal which shall evaluate and comment on the written justification for the proposed text amendment provided in the submittal. Staff shall further evaluate the submittal based on the following questions:
  - A. How does the proposed text amendment further the purpose of this Title as outlined in Section 7.01.050 or the Plan, as applicable?
  - B. How does the proposed text amendment relate to the City's Comprehensive Plan overall?
  - C. Which of the following factors have arisen that are not properly addressed in the current text?
    - i. The text should be brought into conformance with the Comprehensive Plan (note pertinent portions of the Comprehensive Plan).
    - ii. A change has occurred in the land market, or other factors have arisen which require a new form of development, a new type of land use, or a new procedure to meet said changes.
    - iii. New methods of development or providing infrastructure make it necessary to alter this Title or the Plan to meet these new factors.
    - iv. Changing governmental finances require amending this Title or the Plan in order to meet the needs of the government in terms of providing and affording public services.
    - v. Numerous variances have been granted from the same section of this Title or the Plan making the regulation a norm rather than an individual and particular hardship which were unforeseen at the time of the adoption of this Title/Plan.

- D. If the proposed amendment is concerned with the land use or bulk, density and intensity regulations: How does the proposed amendment maintain the desired overall consistency of land uses, land use intensities, and land use impacts within the pertinent zoning districts?
- (3) A staff report shall be forwarded to the Plan Commission for review and use in the development of a recommendation to the City Council.
- (c) Review by the Plan Commission

The City Council shall not amend this Title without allowing for a recommendation from the Plan Commission per the provisions of this subsection.

- (1) Within sixty (60) days after receipt of the complete petition as determined by the Zoning Administrator, the Plan Commission shall hold a public hearing. Notice of the proposed text amendment and the hearing shall conform to the requirements of Section 5-3-1 of the Indiana Code. Said notice shall contain the time and place of the hearing, the geographic areas (or zoning districts in a specified geographic area) to which the proposal applies, a summary (which the Plan Commission shall have prepared) of the subject matter contained in the proposal (not the entire text) that describes any new or changed provisions, where a copy of the proposal is on file for examination before the hearing, that written objections to the proposal that are filed with the secretary of the commission before the hearing will be considered, that oral comments concerning the proposal will be heard, that the hearing may be continued from time to time as may be found necessary, and if the proposal contains or would add or amend any penalty or forfeiture provisions the entire text of those penalty or forfeiture provisions. In addition, at least ten (10) days before the hearing the Zoning Administrator shall mail an identical notice to the petitioner.
- (2) Within ten (10) working days after the Plan Commission has determined its recommendation it shall certify the proposal and shall make a written report to the City Council stating its findings regarding subsection (b) above, and its recommendations regarding the petition as a whole.
- (d) Review and Action by the City Council

The City Council shall consider the recommendation of the Plan Commission regarding the proposed text amendment and vote on the proposal within ninety (90) days after Plan Commission certification. Any action to amend the provisions of this Title shall require a majority vote of the City Council. Approval of the requested amendment shall be considered as the approval of a unique request, and shall not be construed as a precedent for any other proposed amendment.

- (1) This subsection applies if the proposal receives a favorable recommendation from the Plan Commission:
  - A. At the first regular meeting of the City Council after the proposal is certified (or at any subsequent meeting within the ninety (90) day period), the City Council may adopt, reject, or amend the proposal. The City Council shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.
  - B. If the City Council adopts (as certified) the proposal, it takes effect as other ordinances of the City Council,
  - C. If the City Council fails to act on the proposal within ninety (90) days after certification, it takes effect as if it had been adopted (as certified) ninety (90) days after certification.
  - D. If the City Council rejects or amends the proposal, it shall be returned to the Plan Commission for its consideration, with a written statement of the reasons for rejection or amendment. The Commission has forty-five (45) days in which to consider the rejection or amendment and report to the City Council as follows:
    - i. If the Commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the City Council as of the date of the filing of the Commission's report of approval with the City Council or the end of the forty-five (45) day period.
    - ii. If the Commission disapproves the rejection or amendment, the action of the City Council on the original rejection or amendment stands

only if confirmed by another vote of the City Council within forty-five (45) days after the Commission certifies its disapproval. If the City Council fails to confirm its action under this clause, the ordinance takes effect in the manner provided in subdivision C.

- (2) This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the Plan Commission.
  - A. At the first regular meeting of the City Council after the proposal is certified (or at any subsequent meeting within the ninety (90) day period), the City Council may adopt, reject, or amend the proposal. The City Council shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.
  - B. If the City Council adopts (as certified) the proposal, it takes effect as other ordinances of the City Council.
  - C. If the City Council rejects the proposal or fails to act on it within ninety (90) days after certification, it is defeated.
  - D. If the City Council amends the proposal, it shall be returned to the Plan Commission for its consideration, with a written statement of the reasons for the amendment. The commission has forty-five (45) days in which to consider the amendment and report to the City Council as follows:
    - i. If the Commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the City Council as of the date of the filing of the commission's report of approval with the City Council or the end of the forty-five (45) day period.
    - ii. If the commission disapproves the amendment, the action of the City Council on the original amendment stands only if confirmed by another vote of the City Council within forty-five (45) days after the commission certifies its

disapproval. If the City Council fails to confirm its action under this clause, the ordinance is defeated as provided in subsection C.

(e) Effect of Denial

No application which has been denied (either wholly or in part) shall be resubmitted for a period of twelve (12) months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.

(f) Fee

A fee is required for this procedure. Refer to Section 7.10.060.

(g) Printing

The Plan Commission must print the amendments to the zoning ordinance per Section 36-7-4-610 of the Indiana Code. (Ord. 1996-02, S1, March 25, 1996)

**7.09.030 Amendment of the Official Zoning Map or Comprehensive Plan Land Use Map.**

(a) Application Requirements

All applications for proposed amendments to the Official Zoning Map or Plan Map, shall be filed in the office of the Zoning Administrator by the city council, the Plan Commission or the property owners who own at least fifty (50) percent of the land involved and shall be accompanied by the following:

(1) A map of the subject property showing all lands for which the change is proposed, and all other lands within two hundred (200) feet of the boundaries of the subject property. Said map shall clearly indicate the current zoning of the subject property and the property within two hundred (200) feet, and the local government which maintains that zoning control. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided. Said map and all its attachments shall be submitted in a manner which is reproducible with a photocopier.

(2) A map of the general location of the site in relation to the City as a whole; and

- (3) Written justification for the proposed map amendment (the petitioner is advised to answer the questions in subsection (b) below).

(b) Review by Staff

- (1) The Zoning Administrator shall review the submittal in order to ensure that all required portions of the submittal are provided.
- (2) After acknowledgment of a complete submittal, City Staff shall undertake a review of the submittal which shall evaluate and comment on the written justification for the proposed map amendment provided in the submittal. Staff shall further evaluate the submittal based on the following questions:
  - A. How does the proposed Official Zoning Map/Plan Map amendment further the purpose of this Title as outlined in Section 7.01.050 or the Plan?
  - B. How does the proposed map amendment relate to the City's Comprehensive Plan overall?
  - C. Which of the following factors has arisen that are not properly addressed on the current zoning/plan map?
    - i. The designations on the map should be brought into conformance with the Comprehensive Plan (note pertinent portions of the Comprehensive Plan).
    - ii. A mistake was made in mapping on the Official Zoning Map/Land Use Map. (That is the area is, and has been, developing in a manner and purpose different from that for which it is mapped. NOTE: If this reason is cited, it must be demonstrated that the inconsistency between actual land use and designated zoning/land use is not intended, as the City may intend to stop an undesirable land use pattern from spreading);
    - iii. Factors have changed (such as the availability of new data, the presence of new roads or other infrastructure, new or additional development, annexation, or other zoning

changes), making the subject property more appropriate for a different zoning district or land use designation;

- iv. Growth patterns or rates have changed, thereby creating the need for an amendment to the map.

D. How does the proposed amendment maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the surroundings of the subject property?

- (3) A staff report shall be forwarded to the Plan Commission for review and use in the development of a recommendation to the City Council.

(c) Review by the Plan Commission

The City Council shall not amend the Official Zoning Map/Plan Map without allowing for a recommendation from the Plan Commission per the provisions of this subsection.

- (1) Within sixty (60) days after receipt of the complete petition as determined by the Zoning Administrator, the Plan Commission shall hold a public hearing. Notice of the proposed text amendment and the hearing shall conform to the requirements of Section 5-3-1 of the Indiana Code. Said notice shall contain the time and place of the hearing, the geographic area that is the subject of the zone map or land use map change, a summary of the current and proposed zoning or land use designations, where a copy of the proposal is on file for examination before the hearing, that written objections to the proposal that are filed with the secretary of the commission before the hearing will be considered, that oral comments concerning the proposal will be heard, and that the hearing may be continued from time to time as may be found necessary. In addition, at least ten (10) days before the hearing the Zoning Administrator shall mail an identical notice to the petitioner and to all property owners within two hundred (200) feet of the subject property.
- (2) Within ten (10) business days after the Plan Commission determines its recommendation, the Plan Commission shall certify the proposal to the City Council stating its findings regarding subsection (b) above, and its recommendations regarding the petition as a whole.

(d) Review and Action by the City Council

The City Council shall consider the recommendation of the Plan Commission regarding the proposed map amendment and vote on the proposal within ninety (90) days after Plan Commission certification. Any action to amend the maps shall require a majority vote of the City Council. Approval of the requested map amendment shall be considered as the approval of a unique request, and shall not be construed as a precedent for any other proposed map amendment.

(1) This subsection applies if the proposal receives a favorable recommendation from the Plan Commission:

- A. At the first regular meeting of the City Council after the proposal is certified (or at any subsequent meeting within the ninety (90) day period), the City Council may adopt or reject the proposal. The City Council shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.
- B. If the City Council adopts (as certified) the proposal, it takes effect as other ordinances of the City Council.
- C. If the City Council rejects the proposal, it is defeated.
- D. If the City Council fails to act on the proposal within ninety (90) days after certification, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(2) This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the Plan Commission.

- A. At the first regular meeting of the City Council after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the City Council may adopt, reject the proposal. The City Council shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.
- B. If the City Council adopts (as certified) the proposal, it takes effect as other ordinances of the City Council.



C. If the City Council rejects the proposal, it is defeated.

D. If the City Council fails to act on the proposal within ninety (90) days after certification, it is defeated.

(e) Effect of Denial

No application which has been denied (either wholly or in part) shall be resubmitted for a period of twelve (12) months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.

(f) Fee

A fee is required for this procedure. Refer to Section 7.10.060.

(g) Map Revision

The official zoning map that is kept available by the Zoning Administrator or in the office of the Plan Commission shall be updated to reflect the map amendment. (Ord. 96-02, S1, March 25, 1996)

**7.09.040 Special Use Review.**

(a) Application Requirements

All applications for, or amendments to Special Uses or major amendment to the development plans approved thereunder, shall be filed in the office of the Zoning Administrator and shall be accompanied by the following:

(1) A map of the subject property showing all lands for which the Special Use is proposed, and all other lands within two hundred (200) feet of the boundaries of the subject property. Said map shall clearly indicate the current zoning of the subject property and the property within two hundred (200) feet, and the local government which maintains that zoning control. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided. Said map and all its attachments shall be submitted in a manner which is reproducible with a photocopier.

(2) A map of the general location of the site in relation to the City as a whole;

- (3) A written description of the proposed Special Use describing the type of activities, buildings, and structures for the subject property and their general locations;
- (4) A site development plan of the subject property as proposed for development which includes:
  - A. A title block which indicates the names and addresses of the current owners of the property.
  - B. A north arrow and a graphic scale.
  - C. All property lines, utility lines, easements and drainageways, and right-of-way lines with dimensions.
  - D. All required building and parking setback lines and building heights.
  - E. A legal description of the subject property.
  - F. All existing and proposed buildings, structures, paved areas, walks, drives, parking and loading spaces and their number provided vs. number required, signs, decks, patios, fence, utility poles, lighting, drainage facilities, landscaping, outdoor storage, dumpsites, on-site septic or waste treatment systems, and walls.
  - G. Any other information required by the Zoning Administrator.
- (5) Written justification for the proposed Special Use (the petitioner is advised to answer the questions in subsection (b) below).

(b) Review by Staff

- (1) The Zoning Administrator shall review the submittal in order to ensure that all required portions of the submittal are provided.
- (2) After acknowledgment of a complete submittal, City Staff shall undertake a review of the submittal which shall evaluate and comment on the written justification for the proposed Special Use provided in the submittal. Staff shall

further evaluate the submittal based on the following questions:

- A. How is the proposed Special Use (the use in general) in harmony with the purposes, goals, objectives, policies and standards of the City of Cannelton Comprehensive Plan, this Title, and any other plan, program, or ordinance adopted or under consideration pursuant to official notice by the City?
- B. How is the proposed Special Use (in its specific location) in harmony with the purposes, goals, objectives, policies and standards of the City of Cannelton Comprehensive Plan, this Title, and any other plan, program, or ordinance adopted or under consideration pursuant to official notice by the City?
- C. Does the proposed Special Use, its proposed location as depicted on the required site plan result in a substantial or undue adverse impact on adjacent property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or right-of-way, or other matters affecting the public health, safety or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions and policies of this Title, the Comprehensive Plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the City of other governmental agency having jurisdiction to guide growth and development?
- D. Does the proposed Special Use maintain the desired consistency of land uses, land surroundings of the subject property?
- E. Is the proposed Special Use located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities or service provided by public agencies serving the subject property?
- F. Do the potential benefits of the proposed Special Use outweigh any all potential adverse impacts of the proposed Special Use (as identified in A. through E.

above), after taking into consideration any proposal by the petitioner and any requirements recommended by the petitioner to ameliorate such impacts?

- (3) A staff report shall be forwarded to the Board of Zoning Appeals for its review and use in the development of determination.

(c) Review by the Board of Zoning Appeals

- (1) Within forty-five (45) days after receipt of the complete petition as determined by the Zoning Administrator, the Board of Zoning Appeals shall hold a public hearing. Notice of the Special Use and the hearing shall conform to the requirements of Section 5-3-1 Indiana Code. Said notice shall contain a description of the subject property and the proposed Special Use. In addition, at least ten (10) days before the hearing the Zoning Administrator shall mail an identical notice to all property owners within two hundred (200) feet of the subject property, and shall mail an identical notice to the petitioner.
- (2) Within sixty (60) days after the receipt of the complete petition as determined by the Zoning Administrator (or within an extension of said period requested in writing by the petitioner and granted by the Board of Zoning Appeals), the Board of Zoning Appeals shall make a written determination stating its findings regarding subsection (b) above, and the petition as a whole.

(d) Effect of Denial

No application which has been denied (either wholly or in part) shall be resubmitted for a period of twelve (12) months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.

(e) Revocation of a Special Use

Upon approval by the Board of Zoning Appeals, the petitioner must demonstrate that the proposed Special Use meets all general and specific Special Use and site plan requirements. Any Special Use found in violation with the terms of this Title shall be subject to all applicable procedures and penalties. A Special Use may be revoked for such a violation by a majority vote of the Board of Zoning Appeals, following the procedures for obtaining a Special Use above.

(f) Time Limits on the Development of a Special Use

The start of construction of any and all Special Use shall be initiated within three hundred sixty-five (365) days of their approval by the Board and shall be operational within seven hundred thirty (730) days of said approval. Failure to initiate development within this period shall automatically constitute a revocation of the Special Use. For the purposes of this section “operational” shall mean permanent occupancy. Prior to such a revocation, the petitioner may request an extension to this period. Said request shall require formal approval by the Board and shall be based upon a showing of acceptable justification (as determined by the Board of Zoning Appeals) and shall be approved only if the conditions relative to the original approval’s appropriateness remain in effect.

(g) Discontinuance of a Special Use

Any and all Special Uses which have been discontinued for a period exceeding three hundred sixty five (365) days shall have their Special use invalidated automatically. The burden of proof shall be on the property owner to conclusively demonstrate that the subject Special Use was operational during this period.

(h) Change of Ownership

All requirements of the approved Special Use shall be continued regardless of ownership of the subject property. Modification of any Special Use without approval by the Board of Zoning Appeals (except for minor development plan changes approved by the Zoning Administrator), shall be grounds for revocation of said Special Use.

(i) Recordation of Special Use Conditions

All documents associated with the written description, approved site plan, and the specific conditions of approval, along with a legal description of the property, may be recorded by the City with the County recorder’s office.

(j) Fee

A fee is required for this procedure. Refer to Section 7.10.060. (Ord. 96-02, S1, March 25, 1996)

**7.09.050 Variance Review.**

(a) Purpose

This Section is intended to provide regulations which enable the Board of Zoning Appeals to hear and decide requests for variances from the development standards (such as height, bulk, or area) of this Title as will not be contrary to the public interest; where owing to special factors, a literal enforcement of this Title would result in practical difficulty or unnecessary hardship. Use variances shall not be permitted but shall otherwise be treated as set forth in Section 7.10.050 (g) (3).

(b) Initiation of Requests

Request for variances may be brought by a recommendation of the Board of Zoning Appeals or City Council, or by a petition of the owners of the subject property.

(c) Application Requirements

All applications for proposed variances, shall be filed in the office of the Zoning Administrator and shall be accompanied by the following:

- (1) A map of the subject property showing all lands for which the variance is proposed, and all other lands within two hundred (200) feet of the boundaries of the subject property. Said map shall clearly indicate the current zoning of the subject property and the property within two hundred (200) feet, and the local government which maintains that zoning control. The map should indicate the location of the variance request and its nature (or provide a sketch if the variance is not mapable). All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided. Said map and all its attachments shall be submitted in a manner which is reproducible with a photocopier.
- (2) A map of the general location of the site in relation to the City as a whole; and
- (3) Written justification for the proposed variance (the petitioner is advised to answer the questions in subsection (b) below).
- (4) A staff report shall be forwarded to the Board of Zoning Appeals for review and use in the development of a determination.

(d) Review by Staff

- (1) The Zoning Administrator shall review the submittal in order to ensure that all required portions of the submittal are provided.
- (2) After acknowledgment of a complete submittal, City Staff shall undertake a review of the submittal which shall evaluate and comment on the written justification for the proposed variance provided in the submittal. Staff shall further evaluate the submittal based on the following questions:
  - A. What exceptional or extraordinary circumstances or special factors are present which apply on to the subject property? The response to this question shall clearly indicate how the subject property contains factors which are not present on other properties in the same zoning district. Specifically:
    - i. The hardship or difficulty shall be peculiar to the subject property and different from that of other properties, and not one which affects all properties similarly. Such a hardship or difficulty shall have arisen because of the unusual shape of the original acreage parcel; unusual topography or elevation; or because the property was created before the passage of the current zoning regulations and is not economically suitable for a permitted use or will not accommodate a structure of reasonable design for a permitted use if all area, yard, parking and setback requirements are observed;
    - ii. Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance;
    - iii. Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the sale of portions of a property reducing the remainder of said property below buildable size or cutting off existing access to a public right-of-way or deed restrictions imposed by the owner's predecessor in title are considered to be self-imposed hardships;
    - iv. Violations by, or variances granted to, neighboring properties shall not justify a variance;

- v. The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance.
- B. In what manner do the factors identified in A. above prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.
- C. Would the granting of the proposed variance be of substantial detriment to adjacent properties? The response to this question shall clearly indicate how the proposed variance will have no substantial negative impact on adjacent properties.
- D. Would the granting of the proposed variance as depicted on the map or site plan result in a substantial or undue adverse impact on the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters effecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of this Title, the Comprehensive Plan, or any other plan, map, policy or ordinance of the City? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on such long-range planning matters.
- E. Have the factors which present the reason for the proposed variance been created by the act of the petitioner or previous property owner or their agent (eg. previous development decisions such as building placement, floor plan, orientation, lotting pattern or grading) after the effective date of this Title? The response to this question shall clearly indicate that such factors existed prior to the effective date of this Title and were not created by action of the petitioner, a previous property owner, or their agents.



- (3) A staff report shall be forwarded to the Board of Zoning Appeals for its review and use in the development of determination.

(c) Review and Determination by the Board of Zoning Appeals

- (1) Within forty-five (45) days after receipt of the complete petition as determined by the Zoning Administrator, the Board of Zoning Appeals shall hold a public hearing. Notice of the requested variance and the hearing shall conform to the requirements of Section 5-3-1 Indiana Code. Said notice shall contain a description of the subject property and the proposed variance. In addition, at least ten (10) days before the hearing the Zoning Administrator shall mail an identical notice to all property owners within two hundred (200) feet of the subject property, and shall mail an identical notice to the petitioner.
- (2) Within sixty (60) days after the receipt of the complete petition as determined by the Zoning Administrator (or within an extension of said period requested in writing by the petitioner and granted by the Board of Zoning Appeals), the Board of Zoning Appeals shall make a written determination stating its findings regarding subsection (b) above, and the petition as a whole.
- (3) If the Board fails to make a determination within ninety (90) days after the public hearing, than the request for the variance shall be considered defeated.

(d) Effect of Denial

No application which has been denied (either wholly or in part) shall be resubmitted for a period of twelve (12) months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.

(e) Limited Effect of a Variance

Where the Board of Zoning Appeals has granted a variance, such approval shall neither change the use classification of the building or premises, nor give it any status as a nonconforming use other than that which it has as a result of the variance. Granting of a variance shall be considered as unique to the variance granted, and shall not be construed as precedent for any other proposed variance.

(f) Stay of Proceedings

An application for a variance shall stay all legal proceeding furthering enforcement of any provision of this Title from which the petitioner is requesting a variance, unless the Zoning Administrator certifies to the Board of Zoning Appeals after the request for the variance has been filed, that by reason of the facts a stay would, in his/her opinion cause great and immediate danger or peril to life or property. In such case proceeding shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Appeals or a Court of Record on application, on notice to the Zoning Administrator, and on due cause shown.

(g) Fee

A fee is required for this procedure. Refer to Section 7.10.060. (Ord. 96-02, S1, March 25, 1996)

**7.09.060 Appeals.**

(a) Initiation of Requests

The Board of Zoning Appeals shall hear and determine appeals from and review:

- (1) any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;
- (2) any order, requirement, decision, or determination made by an administrative board or other body except a Plan Commission in relation to the enforcement of the zoning ordinance; or
- (3) any order, requirement, decision, or determination made by an administrative board or other body except a Plan Commission in relation to the enforcement of an ordinance adopted under this chapter requiring the procurement of an improvement location or building permit.

(b) Application Requirements

All applications for proposed appeals, shall be filed in the office of the Zoning Administrator within thirty (30) days of the date of issuance of the order being appealed (failure to initiate this appeal procedure within the thirty (30) day period shall constitute a final and binding waiver of the right to appeal) A person may not

communicate with any member of the board before the hearing with intent to influence the member's action on a matter pending before the board. The application shall be accompanied by the following:

- (1) A copy of the pertinent items in the file on the matter maintained by the person or board as identified by the petitioner and/or the board or persons who are the subject of the appeal, and
- (2) A written statement from the petitioner indicating the reasons why an appeal is justified, based upon an analysis of the board or person's original decision. This statement shall be signed and dated by the petitioner.

(c) Review by Staff

The submitted appeals shall be reviewed by City Staff as follows:

- (1) The Zoning Administrator shall review the submittal in order to ensure that all required portions of the submittal are provided.
- (2) After acknowledgment of a complete submittal, City Staff shall undertake a review of the submittal which shall evaluate and comment on the written justification for the appeal as provided in the submittal.
- (3) A staff report shall be forwarded to the Board of Zoning Appeals for its review and use in the development of a determination.

(d) Review and Determination by the Board of Zoning Appeals

- (1) Within forty-five (45) days after receipt of the complete petition as determined by the Zoning Administrator, the Board of Zoning Appeals shall hold a public hearing. Notice of the appeal and the hearing shall conform to the requirements of Section 5-3-1 Indiana Code. Said notice shall contain a description of the appeal. At least ten (10) days before the hearing the Zoning Administrator shall mail an identical notice to the petitioner.
- (2) Within sixty (60) days after the receipt of the complete petition as determined by the Zoning Administrator (or within an extension of said period requested in writing by

the petitioner and granted by the Board of Zoning Appeals), the Board of Zoning Appeals shall make a written determination stating its findings regarding subsection (b) above, and the petition as a whole. The Board may reverse, affirm, or modify the order, requirements, decision, or determination appealed from. For this purpose, the Board has all the powers of the official, officer, board, or body from which the appeal is taken. Within five (5) days after making any decision on appeal, the Board of Zoning Appeals shall file in the office of the board a copy of its decision.

- (3) If the Board fails to make a determination within ninety (90) days after the public hearing, then the request for the variance shall be considered denied.

(e) Effect of Denial

No application which has been denied (either wholly or in part) shall be resubmitted for a period of twelve (12) months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.

(f) Limited Effect of a Favorable Ruling on an Appeal

No ruling by the Board of Zoning Appeals shall be valid for a period of more than 365 days from the date of issuance of the ruling on the appeal, unless a Building Permit is issued and development commenced and is thereafter diligently pursued to completion, or occupancy is obtained within the 365 day period. Any ruling shall not be deemed to allow any similar use or action for which a separate ruling has not been obtained. If the use or action for which a favorable ruling has been obtained ceases for a period of 365 consecutive days, the ruling shall automatically expire and cease to be of any force.

(g) Stay of Proceedings

- (1) When an appeal from the decision of an official or board has been filed with the Board of Zoning Appeals, proceedings and work on the premises affected shall be stayed unless that official or board certifies to the Board of Zoning Appeals that, by reason of the facts, a stay would cause great and immediate danger or imminent peril to life or property. In that case, proceedings or work may not be stayed except by a restraining order.

- (2) After notice to the officer or board and to the owner of the premises affected and after due cause is shown, the circuit or superior court of the county in which the premises affected are located may grant the restraining order.
- (3) After the owner of, or a person in charge of the work on the premises affected has received notice that an appeal has been filed with the Board of Zoning Appeals, the official or board charged with the enforcement of an ordinance, may order the work stayed and call on the police power of the City of Cannelton to give effect to that order.

(h) Fee

A fee is required for this procedure. Refer to Section 7.10.060. (Ord. 1996-02, S1, March 25, 1996)

**7.09.070 Interpretations.**

(a) Initiation of Requests

The Zoning Administrator is assigned the responsibility for the official interpretation of this Title. Proceedings for an interpretation may be brought by a petition of the owners of a subject property, a recommendation of the Plan Commission, action of the City Council, or a request by City Staff.

(b) Application Requirements

All applications for proposed interpretations, shall be filed in the office of the Zoning Administrator and shall be accompanied by the following:

(1) Text from Which Interpretation is Sought

The request shall clearly indicate the part of the text of this Title for which the interpretation is requested and the specific questions the petitioner has regarding the text.

(2) Applications Relative to a Specific Property

If the request relates to the application of this Title to a specific property, the additional following information shall be provided:

- A. A map of the subject property showing all lands for which the interpretation is requested, and all other lands within two hundred (200) feet of the boundaries of the subject property. Said map shall clearly

indicate the current zoning of the subject property and the property within two hundred (200) feet, and the local government which maintains that zoning control. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided.

- B. A map of the general location of the site in relation to the City as a whole; and
- C. A written description of the reason for the requested interpretation and how the proposed interpretation relates to type of activities, buildings, and structures currently located on, and proposed for, the subject property.
- D. A site development plan of the subject property as proposed for development. Said site plan shall conform to the requirements of Section 7.09.040(a)(4).

(3) Applications Relative to a Land Use

If the requested interpretation relates to the classification or treatment of a particular land use under the provisions of this Title, a series of written responses to the following questions shall also be submitted:

- A. How is the subject land use (in general) in harmony with the purposes, goals, objectives, policies and standards of the City of Cannelton Comprehensive Plan, this Title, and any other plan, program, or ordinance adopted or under consideration pursuant to official notice by the City?
- B. How is the subject land use in harmony with the purposes, goals, objectives, policies and standards of the pertinent zoning district for which the interpretation is being sought?
- C. Do the potential public benefits of the proposed land use outweigh any and all potential adverse impacts of the proposed land use?

(c) Review by Zoning Administrator

- (1) The Zoning Administrator shall review the submittal in order to ensure that all required portions of the submittal are provided.

- (2) Second, upon receipt of and acknowledgment of a complete submittal, and within thirty (30) days of such receipt, the Zoning Administrator shall undertake a review of the submittal which shall evaluate and comment on the written justification for the proposed interpretation provided in the submittal. This review shall also take into consideration the standards for review presented in (d) below.

(d) Standards for Review of Requested Interpretations

This Title shall be interpreted in a manner which is consistent with the purposes intended by the City of Cannelton City Council as noted in this Title and the Comprehensive Plan. The intent of the standards and supporting definitions of this Title is to protect both individual property owners and the general public from adverse impacts that may result from a proposed, modified, or existing land use. To this end, those called upon to interpret this Title shall proceed as follows:

- (1) Articulate certain public purposes underlying the standards for which an interpretation is required.

Rationale: Before any zoning interpretation is made, there must be an explicit discussion of certain purposes for which the regulation was initially imposed. Each zoning regulation is intended to protect the interests of other present and future neighbors and the general public. Each standard is developed as a regular response to an identifiable potential negative impact. A sound interpretation of any standard cannot be ensured without careful analysis of the regulation and the end toward which it is directed. It is understood that there may be other public purposes underlying the interpretation which are not explicitly articulated.

- (2) Articulate the actual impact of the various proposed interpretations, permitting flexibility in design and prohibiting any interpretation that lowers the protection afforded to the public.

Rationale: There is a critical distinction between an interpretation which provides a greater degree of design freedom to achieve a permitted land use, and an interpretation which permits a new or not previously permitted use, or which allows a use to be enlarged, or have its intensity increased beyond the degree specified in this Title. Design freedom is to be encouraged while lowering of the standards of this Title is to be prohibited.

- (3) Determine whether the proposed interpretation will ensure a just balance between the rights of the landowner and all others who will be affected by that person's land use proposal.

Rationale: If an interpretation would merely allow a design solution that is slightly different from the one expressly stated or permitted, and if it would result in a same or greater degree of protection to any affected party (either the adjoining landowners, the public at large, and/or a future property owner or renter), such an interpretation may be appropriately made. An interpretation which would result in any identifiable loss of protection for one group to the benefit of others is contrary to the spirit of this Title.

Similarly, any interpretation which would either increase the nuisance potential of any use or alter the purpose for which the regulation was adopted shall be considered counter to the legislative intent of this Title. Any interpretation which will result in any loss of protection or increase in intensity beyond that already permitted shall only be made if the party interpreting this Title has the power to impose additional restrictions or requirements and exercise this power in order to protect the public.

- (4) This Title has been carefully designed by the City Council to combine maximum achievement of public goals, and the protection of adjoining landowners while providing flexibility for property owners to use their land for a variety of uses consistent with the goals and objectives of the Comprehensive Plan for the City of Cannelton. Great care has been taken to balance the rights of competing groups while achieving maximum protection with flexibility and a range of use options. Persons interpreting this Title should not substitute their own judgments for the legislative acts of the City Council.
- (5) In addition to the petitioner's response to the questions required above, the following standards shall govern the decision on the requested interpretation on land use interpretation matters:

A. Previously Rejected Use

No interpretation shall allow the establishment of any land use which was previously considered and



rejected by the City Council on application for an amendment to the Zoning Ordinance, the Official Zoning Map, or a previously applied for appeal from a requested interpretation submitted within the last five (5) years; unless changed factors have arisen that make the request potentially justifiable as determined by the Board of Zoning Appeals who shall then direct the Zoning Administrator to make an interpretation.

B. Compliance with All Regulations Required

No interpretation shall permit a land use in a zoning district unless evidence is presented which demonstrates that the land use will comply with any and all regulations applicable to development in the subject property's zoning district.

C. Similarity to Permitted Uses

No interpretation shall permit a land use in a particular zoning district unless such use is substantially similar to other uses permitted in that same district and is more similar to such other permitted uses than to uses either not permitted in said district, or permitted in a more intensive district in the same zoning district category (residential, commercial, etc.)

D. Similarity to Special Uses

If the proposed land use is more similar to a land use permitted only as a Special Use in the subject property's zoning district than to a use permitted by right, then an interpretation permitting such use shall be conditioned upon the approval of a Special Use by the Board of Zoning Appeals.

(e) Effect of a Favorable Land Use Interpretation

No interpretation finding a particular land use to be permitted by right or as a Special Use in a specific zoning district shall authorize either the establishment of such use or the development, construction, reconstruction, alteration or moving of any building or structure. A favorable interpretation merely authorizes the preparation, filing, and processing of applications for any permits and approvals which may be required by this Title. These permits and approvals, include, but are not

limited to, site development plans, Special Use permits, and certificates of appropriateness.

(f) Limitations on Favorable Land Use Interpretations

(1) Period of Validity

No interpretation finding a particular land use to be permitted by right or as a Special Use in a specified zoning district shall be valid for a period of more than 365 days from the date of issuance of the interpretation, unless a Building Permit is issued and development is actually begun within that period, and is thereafter diligently pursued to completion, or occupancy is obtained and a use commenced within that period.

(2) Applicability to Other Uses or Properties Prohibited

An interpretation finding a particular land use to be permitted by right or as a Special Use in a specified zoning district shall be deemed to authorize only that particular use as proposed and designed at that particular location for which the interpretation was issued. The interpretation shall not be deemed to authorize any allegedly similar use for which a separate interpretation has not been issued. A favorable interpretation shall automatically expire and cease to be of any force or effect if the particular use for which it was issued shall, for any reason, be discontinued for a period of 365 consecutive days or more.

(g) Fee

A fee is required for this procedure. Refer to Section 7.10.060. (Ord. 1996-02, S1, March 25, 1996)

## Chapter 7.10

### ADMINISTRATION AND ENFORCEMENT

#### Sections:

7.10.010	Purpose
7.10.020	Zoning Administrator
7.10.030	Building Inspector
7.10.040	Plan Commission
7.10.050	Board of Zoning Appeals
7.10.060	Fees
7.10.070	Violations and Penalties
7.10.080	Injunctive relief
7.01.090	Burden of Proof

**7.10.010 Purpose.** The purpose of this Chapter is to establish the administrative and enforcement provisions for the implementation of this Title. (Ord. 1996-02, S1, March 25, 1996)

**7.10.020 Zoning Administrator.** This Title shall be administered, implemented and enforced by the Zoning Administrator, and/or their designee, who in addition and per said authority shall:

- (a) Receive, file, and forward all applications for any all procedures governed by this Title (see Chapter 7.09) to the designated official bodies.
- (b) Determine that all permits, plans, and certificates required herein comply with all provisions of this Title.
- (c) Make interpretations regarding the meaning of the provisions of this Title.
- (d) Institute, in the name of the City of Cannelton, any appropriate actions or proceeding against a violator of this Title, including abatement of violations, as provided by law.
- (e) Maintain permanent and current records of this Title, including but not limited to all maps, amendments, special uses, variances, appeals, interpretations, development plans, and applications therefor. (Ord. 1996-02, S1, March 25, 1996)

**7.10.030 Building Inspector.** In addition to any other responsibilities set forth elsewhere in the Cannelton Code of Ordinances, the Building Inspector shall be responsible for the following duties:

- (a) Inspections

The Building Inspector shall perform inspections of buildings structures and lands to determine compliance with this Title.

(b) Permits

The Building Inspector shall issue permits for the activities listed under Section 7.10.060(e) after an application for said permit has been submitted to the City on forms provided by the City. The application shall be signed by the property owner and accompanied by the following information:

- (1) A site development plan showing the information required under Section 7.09.040(a)(4).
- (2) Plans and specifications as required by the Zoning Administrator and Building Inspector showing the work to be completed.
- (3) A copy of the sewage disposal permit issued by Perry County for all private disposal systems.
- (4) A copy of the Indiana Department of Fire and Building Services Construction Design Release shall be provided for all non-exempt Class-I construction, pursuant to IC 22-15-3-1.
- (5) A copy of the Certificate of Appropriateness for construction related to a historic building or district, if applicable.
- (6) A copy of the permit from the Natural Resources Commission for construction in a floodway, if applicable.
- (7) A determination from the Zoning Administrator that the permit and plans comply with all provisions of this Title and that any approvals have been granted by the appropriate Board or Commission.
- (8) Any other information required by the Zoning Administrator or the Building Inspector.
- (9) Expiration Date for Permit. All permits issued pursuant to Section 7:10.030 of the Cannelton Municipal Code shall expire one (1) year following the date of the issuance of such permit. The expiration date of each permit issued by the Cannelton Building Inspector shall contain a notation on the face of such permit as to the expiration date of said permit.

- (10) Effect of Expiration of Permit. Upon the expiration of the building permit, the holder of such permit shall have to apply for a new building permit, in the same fashion as though no building permit had yet been issued for the subject property or project for which the permit had expired. (Ord. 13-08, S(c), S(d), Aug. 12, 2013) (Ord. 1996-02, S1, March 25, 1996)

#### **7.10.040 Plan Commission.**

- (a) Establishment

There is hereby established an advisory Plan Commission per Indiana Code 36-7-4-200 who shall hereafter be referred to as the City of Cannelton Plan Commission.

- (b) Membership

- (1) Voting Members

The Plan Commission shall consist of nine (9) voting members. The City Clerk shall certify members appointed by City Council and the Mayor shall certify his appointments. The certificates shall be sent to and made a part of the records of the Plan Commission.

- A. The City Council shall appoint three (3) persons, who must be elected or appointed municipal officials or employees in the municipal government, as members.
    - B. The Mayor shall appoint four (4) citizen members, of whom no more than two (2) may be of the same political party. Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area. A citizen member may not hold other elective or appointive office in municipal, county, or state government. A citizen member must be a resident of the jurisdictional area of the Plan Commission.
    - C. The County executive shall appoint two (2) additional citizen members to the City Plan Commission. The citizen members must:

- i. reside in the unincorporated area; and
- ii. not be of the same political party.

(2) Advisory Members

Each advisory member to the City Plan Commission and to the County Plan Commission has all the privileges of membership, except the right to vote.

- A. A designated representative of the County Plan Commission shall serve as an advisory member of the City Plan Commission.
- B. A designated representative of the City Plan Commission shall serve as an advisory member of the County Plan Commission.

(c) Terms of Voting Members

(1) Citizen Members

A. Initial Terms

i. City Appointments

Two (2) citizen members shall initially be appointed for a term of three (3) years and two (2) shall initially be appointed for a term of four (4) years. Each member's term expires on the first Monday of January of the second, third, or fourth year, respectively, after the year of the member's appointment.

ii. County Appointments

Initially, one (1) member shall be appointed for a term of one (1) year and the other for a term of four (4) years

B. Subsequent Terms

A member serves until his successor is appointed and qualified. A member is eligible for reappointment. When an initial term of office of a citizen member expires, each new appointment of a citizen member is for a term of four (4) years.

(2) City Employees and City Officials

The term of office of an elected or appointed city official or employee shall be coextensive with the member's term of office or employment.

(d) Vacancies

If a vacancy occurs among the Plan Commission members who are appointed, then the appointing authority shall appoint a member for the unexpired term of the vacating member.

(e) Conflict of Interest

A member of the Plan Commission may not participate as a member in a hearing or decision of the Plan Commission concerning a zoning matter in which the member has a direct or indirect financial interest. The Commission shall enter in its records the fact that its member has such a disqualification. A member of the Plan Commission may not directly or personally represent another person in a hearing before the Commission concerning a zoning matter. As used in this section, "zoning matter" does not include the preparation or adoption of a comprehensive plan.

(f) Quorum

Action of the Plan Commission is not official, unless it is authorized, at a regular or special meeting, by a majority of the entire membership of the Plan Commission.

(g) Organization

(1) President and Vice-President

At its first regular meeting in each year, the Plan Commission shall elect from its members a president and a vice president. The vice present may act as president of the Plan Commission during the absence or disability of the president.

(2) Secretary

The Plan Commission may appoint and fix the duties of a secretary, who is not required to be a member of the Commission.

(3) Meetings and Minutes

The Plan Commission shall fix the time for holding regular meetings each month or as necessary. The Commission shall keep minutes of its meetings. The minutes of Commission meetings and all records shall be filed in the office of the Commission and are public records. Special meetings of the Plan Commission may be called by the president or by two (2) members of the Commission upon written request to the secretary. The secretary shall send to all members, at least three (3) days before the special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if: (1) the date, time, and place of a special meeting is fixed in a regular meeting and all members of the Commission are present at the regular meeting.

(h) Duties

(1) Recommendations to the City Council

A. Comprehensive Plan

The Plan Commission shall make recommendations to the City Council concerning the adoption of the comprehensive plan, ordinance, and amendments for the development of the city and of the contiguous unincorporated area, designated by the Commission, that is outside the corporate boundaries of the city, and that, in the judgement of the Commission, bears reasonable relation to the development of the city.

B. Zoning Ordinance and Map

The Plan Commission shall make recommendations to the City Council concerning the adoption of the zoning ordinance and official zoning map and text amendments to the zoning ordinance and amendments to the Official Zoning Map, and any other matter, within the jurisdiction of the Commission, authorized by the advisory planning law.

C. Subdivision Ordinance

The Plan Commission shall make recommendations to the City Council concerning the adoption of the subdivision ordinance and text amendments to the subdivision ordinance.



D. Ordinances and Plans Relating to City's Development

The Plan Commission shall make recommendations to the City Council concerning the review, development, or recommendation of, or changes to ordinances, plans, maps, reports, and issues related to the physical development of the city such as housing and building codes, capital improvement plans, annexation policies, etc.

(2) Plan Commission Final Authority for Approval

A. Plats

The Plan Commission shall render decisions concerning and approve plats or replats of subdivisions;

B. Development Plans

The Plan Commission shall render decisions concerning and approve development plans for permitted residential, commercial, and industrial uses;

C. Redevelopment Plans

The Plan Commission shall render decisions concerning and approve redevelopment or economic development plans submitted by the redevelopment commission for conformance with the comprehensive plan; and

D. Street Numbers

The Plan Commission shall render decisions concerning and approve street number assignments to lots and structures.

(3) Administrative Duties

A. Administrative and Fiscal Duties

The Plan Commission shall supervise, and make rules for, the administration of the affairs of the Commission, shall supervise the fiscal affairs of the Commission and prepare and submit an annual

budget to the City Council and shall prescribe uniform rules pertaining to investigations and hearings.

B. Records and Certifications

The Plan Commission shall keep a complete record of all proceedings, shall certify to all official acts, adopt a seal and shall record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers.

C. Dissemination of Information

The Plan Commission shall prepare, publish, and distribute reports, ordinances, and other material relating to authorized activities. (Ord. 96-02, S1, March 25, 1996)

**7.10.050 Board of Zoning Appeals.**

(a) Establishment

The Board of Zoning Appeals (BZA) of the City of Cannelton is hereby established per Indiana Code 36-7-4-900 who shall hereafter be referred to as the City of Cannelton Board of Zoning Appeals.

(b) Membership and Terms

The Board of Zoning Appeals shall consist of five (5) members, who are residents of the City (or extraterritorial area where applicable) and who do not hold other elective or appointive office in municipal, county or state government (except as allowed below on the Plan Commission). The terms of the members shall expire on the first Monday of January of the first, second, third, or fourth years, respectively, after the year of the member's appointment. Each new appointment thereafter shall be for a term of four (4) years. The Board of Zoning Appeals shall be appointed as follows:

(1) Mayoral Appointments

Three (3) citizen members appointed by the Mayor, of whom one (1) must be a member of the Plan Commission to serve a term of four (4) years and two (2) must not be members of the Plan Commission, one to serve a term of one (1) year, and one to serve a term of two (2) years.

(2) City Council Appointments

One (1) citizen member appointed by the City Council, who must not be a member of the Plan Commission, to serve a term of three (3) years.

(3) Plan Commission Appointment

One (1) citizen member appointed by the Plan Commission, who must be a member of the Plan Commission other than the member appointed by the Mayor and must be one of the two (2) members appointed by the county executive to serve on the Plan Commission representing the ETJ area to serve a term of four (4) years.

(c) Vacancies

If a vacancy occurs among the members of the Board of Zoning Appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the Board in any hearing or decision in which the regular member it has appointed has a disqualification.

(d) Conflict of Interest

A member of a Board of Zoning Appeals may not participate in a hearing or decision of that Board concerning a zoning matter in which he has a direct or indirect financial interest. 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 in place of the regular member.

(e) Quorum

A quorum consists of a majority of the entire membership of the Board of Zoning Appeal. Action of the Board of Zoning Appeals is not official, unless it is authorized by a majority of the entire membership of the Board.

(f) Organization

(1) Chairman, Vice-Chairman and Secretary

At the first meeting of each year, the Board of Zoning Appeals shall elect a chairman and vice chairman from its members. The vice chairman may act as chairman during the absence or disability of the chairman. The Board of

Zoning Appeals may also appoint a secretary and such employees as are necessary for the discharge of its duties.

(2) Minutes and Records

The Board of Zoning Appeals shall keep minutes of its proceedings and record the vote on all actions taken. All minutes and records shall be filed in the office of the Board and are public records. The Board shall in all cases heard by it make written findings of fact.

(g) Duties

(1) Appeals

The Board of Zoning Appeals shall hear and determine appeals from any order, requirement, decision or determination made by: an official, hearing officer, or staff member under this Title; an administrative board or other body except the Plan Commission in relation to enforcement of this Title; or an administrative board or other body except the Plan Commission in relation to the enforcement of this Title requiring the procurement of an improvement location or occupancy permit.

(2) Special Uses

The Board of Zoning Appeals shall approve or deny all special uses and reasonable conditions may be imposed as part of its approval.

(3) Variances

The Board of Zoning Appeals shall approve or deny all variances from the provisions of this Title. Variances in development standards shall be permitted, however variances in use shall not be permitted but shall be considered through determination by the Zoning Administrator that the use is an unlisted permitted use, that the use is an unlisted Special Use, or that rezoning of the property is necessary to permit a particular use on a particular property.

(h) Administrative Duties

The Board of Zoning Appeals shall adopt rules which may not conflict with the zoning ordinance, which shall be printed and be

made available to all applicants and other interested persons, concerning the filing of appeals, the application for variances and special uses, the giving of notice, and the conduct of hearings. (Ord. 96-02, S1, March 25, 1996)

**7.10.060 Fees.** Fees shall be payable at the time of submittal of an application in accordance with the following fee schedule:

- |   |  |
|---|--|
| (a) <u>Board of Zoning Appeals Actions:</u>   |  |
| Variance  | \$ 150   |
|   | \$ 50 Single-Family Lots                                     |
| Special Use   | \$ 150   |
| Appeal  | \$ 50  |
| (b) <u>Plan Commission Actions:</u>   |  |
| Zoning Map Amendment (Rezoning)   | \$ 150   |
| Text Amendment to the Zoning Ordinance  | \$ 150   |
| Amendment to the Comprehensive Plan   | \$ 150   |
| Recording Fee<br>(Conditions attached to approvals or similar documents)                                      | \$ 10 plus actual fee  |
| Subdivision Plat Approval/Recording   | (See Subdivision Ordinance)                                  |
| (c) <u>Historic Preservation Commission Actions:</u>  |  |
| Certificate of Appropriateness<br>(for construction affecting historic structures or buildings)               | \$ 10 (deducted from building permit fee if one is required) |
| (d) <u>Zoning Administrator Actions:</u>  |  |
| Interpretation  | \$ 25  |
| (e) <u>Building Inspector Actions:</u>  |  |
| Building Permits: (includes improvement location permit)  |  |
| 1. Residential Building (principal bldg.)   | 25 for 1st unit<br>\$ 10 for ea. Addtl. unit                 |
| 2. Non-Residential Building (principal bldg.)   | \$ 75  |
| 3. Building Additions   | \$ 25  |
| 4. Detached Garages, Carports, Sheds, Accessory Structures and Signs<br>(eg. swimming pools, patios, fences)* | \$ 5   |
| 5. Off-street Parking Lots and Minor Changes to a Development Plan  | \$ 25  |

Building Demolition/Relocation/Change in Use  
(principal building)

\$ 10

Driveway Permit

No fee required, but must  
obtain permit

\*Accessory buildings for an agricultural use do not require a permit.  
(Ord. 96-02, S1, March 25, 1996)

#### **7.10.070 Violations and Penalties.**

(a) Prohibition on Violations

It shall be unlawful to construct or use any structure, land or water, or engage in any development activity in violation of any provisions of this Title, or otherwise neglect, refuse or fail to comply with the Title's requirements. Any person who violates or fails to comply with any of the provisions of this Title shall, upon conviction thereof, be subject to the penalties set forth in (b) below, and in addition, shall pay all costs and expenses, including reasonable attorney and professional consultant fees involved in the case.

(b) Penalties

Any person, firm, corporation or similar entity who violates, disobey, omits, neglects, fails or refuses to comply with or who resists the enforcement of any of the provisions of this Title shall be fined no less than five dollars (\$5.00) nor more than two hundred dollars (\$200.00) for each offense. Each day a violation exists or continues shall constitute a separate offense.

(c) Notice of Violation

If the Zoning Administrator determines that a violation of this Title exists, and further determines that the nature of such violation is not such as to pose a great and immediate danger to the public health, safety, peace, morals, or decency, the Zoning Administrator shall serve written notice by certified mail on the current owner of the property (as indicated on the tax records) on which said violation is occurring to remove said violation with ten (10) working days of receipt of the notice. If such violations are not removed or abated within ten (10) days, the Zoning Administrator shall cause the violation to be abated per (d) below.

(d) Abatement of Violation by the City

If the Zoning Administrator determines that a violation of this Title exists, and further determines that the nature of such violation poses a great and immediate danger to the public health, safety,

peace, morals, or decency, the Zoning Administrator shall cause the violation to be abated. Costs associated with such abatement shall be charged to the owner of the property on which said violation has occurred per (e) below.

(e) Cost of Abatement

In addition to any other penalty imposed by this chapter for a violation of the provisions of this Title, the cost of abating a violation of this Title shall be collected as a debt from the owner of the property on which said violation has occurred. An account of the expenses incurred by the City to abate the violation shall be kept and such expenses shall be charged to and paid by the property owner. Notice of the bill for abatement of the violation shall be mailed to the last known address of said property owner by certified mail, and shall be payable within 30 calendar days from the receipt thereof. (Ord. 96-02, S1, March 25, 1996)

**7.10.080 Injunctive Relief.**

- (a) The board of zoning appeals, or any designated enforcement official, may bring an action for injunction in the circuit court to restrain a person from violating this Title.
- (b) The board of zoning appeals may also bring an action for a mandatory injunction, directing a person to remove a structure erected in violation of this Title.
- (c) If the board of zoning appeals is successful in its action, the respondent shall bear the costs of the action including the City's Attorney's fees. A change of venue from the county may not be granted in such an action. (Ord. 96-02, S1, March 25, 1996)

**7.10.090 Burden of Proof.** In an enforcement action brought under this Title, the party alleging the existence of a nonconforming use or variance granted by the Board of Zoning Appeals has the burden of proof on that issue. The nonexistence of a nonconforming use or variance need not be proved. (Ord. 96-02, S1, March 25, 1996)

## **APPENDIX 1:**

### **Detailed List of Land Uses - Specified Categories**

#### **Institutional - Non-Residential**

Cemeteries  
Churches, Chapels, Synagogues and Temples  
Colleges and Universities  
Religious Assembly Halls and Meeting and Reading Rooms  
Public and Private Schools  
Business, Technical, Trade and Vocational Schools  
and Training Centers, Private  
Gymnasiums: School and Park  
Hospitals - Short term care  
Museums  
Libraries  
Auditoriums  
Clubs, Lodges and Fraternal Organizations  
Public Community and Recreational Centers  
Indoor Public Swimming Pools

#### **Outdoor Public Recreational**

Arboretums and Botanical Gardens  
Athletic Fields  
Ball courts and Ballfields  
Fishing Areas  
Fitness Courses  
Golf Courses  
Hiking and similar Trails  
Nature Preserves and Sanctuaries  
Public Open Grassed Areas  
Picnic Areas and Shelters  
Playgrounds and Totlots  
Swimming Pools and Beaches  
Zoos and animal parks and preserves

#### **Public Services - General**

Fire Stations  
Parking Garages: Public  
Parking Lots: Public  
Police Stations  
Post Offices  
Radio and Television Broadcasting Stations  
Telephone Relay Stations  
Water Towers and Storage Facilities



**Public Services - Intense**

Airports, landing strips, and landing fields  
Bus Terminals  
Heliports and Helipads  
Public Works Garages  
Public Works Storage Yards and Related Facilities  
Radio and Television Towers  
Railroad Stations Railroad Yards and Switching Facilities  
Sewage Treatment and Distribution Facilities  
Telephone Exchange, Switching, and Transmitting Facilities  
Utility Substations  
Utility Yards  
Water Treatment and Distribution Facilities

**Indoor Commercial Entertainment**

Amusement Establishments, except as noted  
    elsewhere in this Title  
Billiard and Pool Halls  
Bowling Alleys  
Cultural and Entertainment Centers  
Dance Halls  
Dance Studios  
Health Clubs  
Miniature Golf Courses  
Nights Clubs and Taverns  
Restaurants  
Skating Rinks  
Swimming Clubs and Pools  
Tennis, Racquetball, Handball, and Other  
    Private Recreational Clubs  
Theaters, Motion Picture and Drama

**Outdoor Commercial Entertainment**

Amusement Parks  
Campground or Travel Park  
Country Clubs  
Miniature Golf Courses  
Race tracks  
Skating Rinks and Parks  
Stables and Riding Academies  
Theaters

**Offices**

Offices: General or Business  
Government Offices except as noted elsewhere in this Title  
Political Organization Offices

**Personal and Professional Services**

Banks and Savings and Loan  
Barber Shops and Beauty Parlors  
Credit Unions and Financial Institutions  
Employment Agencies  
Real Estate Sales and Brokerage Offices  
Tanning Salons

**Health Services**

Medical Clinics  
Dental Clinics  
Physicians  
Dentists  
Tattoo Parlors  
Body Piercing Establishments  
Acupuncture Establishments

**Outdoor Retail Sales and Services**

Aircraft Sales and Service  
Ambulance Services  
Automobile Body Shops  
Automobile Leasing agencies  
Automobile Mini-Markets  
Automobile Repair and Services  
Automobile Service Stations  
Boat Sales and Service  
Building Materials and Supply Stores  
Car Wash Installations  
Drive-In Establishment  
Flea Markets, Permanent  
Lumber Companies and Yards  
Marine Craft and Accessories Sales and Service  
Monument and Tombstones Sales and Service  
Motor Vehicle Rental Agencies  
Motor Vehicle Towing Services  
Motor Vehicle Sales and Service  
Outdoor Nurseries and Garden Centers  
Outdoor Retail. Display and Storage  
Parcel Pick-up and Delivery Services  
Taxicab Offices and Storage  
Truck Wash Installations

### **Indoor Retail Sales and Service**

Air Conditioning Sales and Service  
Antique Shops  
Apparel and Accessory Stores  
Appliance Sales and Service  
Art Galleries  
Art Studios  
Auction Houses  
Art Supply Stores  
Automobile Parts and Supply Stores  
Bait Shops  
Bakeries: Retail  
Banquet Halls  
Bicycles Sales and Repair Shops  
Blueprinting, Photostatting and Small Duplicating Establishments  
Book Stores  
Business Machine Sales and Service  
Camera and Photographic Supply Stores  
Candy and Confectionery Stores  
Carpet and Rug Stores  
Catering Establishments  
China and Glassware Stores  
Cigar, Cigarette and Tobacco Stores  
Clothing and Costume Rental Agencies  
Clothing and Apparel Stores  
Coin, Philatelic, Stamp, and Numismatic Stores  
Computer Sales and Service  
Convenience Stores  
Currency Exchanges  
Dairy Product Sale  
Delicatessens  
Department Stores  
Diaper, Linen and Towel Services  
Drapery Stores  
Drug Stores  
Dry Goods Stores  
Dry Cleaners: Retail  
Electrical Supply and Equipment Stores  
Electronic Sales and Service  
Eyewear Sales and Service  
Equipment Rental and Leasing  
Fabric and Sewing Supply Stores  
Fish Markets  
Floor Covering Stores  
Florists

**Indoor Retail Sales and Service (continued)**

Food Stores  
Frozen Food Stores  
Fruit and Vegetable Markets: Retail  
Fur Repairs  
Furniture Cleaning, Upholstery, and Repair Shops  
Furniture and Home Furnishing Stores  
Furriers and Fur Apparel Stores  
Glass Cutting and Glazing  
Grocery Stores  
Haberdasheries  
Hardware Stores  
Hobby Stores  
Home Decorating Stores  
Hosiery Stores  
Ice Cream Shops  
Ice or Ice Machine Sales  
Interior Decorating Shops  
Jewelry Stores  
Laundromats and Laundries: Retail  
Lawnmower Sales and Services  
Leather Goods and Luggage Stores  
Linoleum and Tile Stores  
Liquor Stores  
Locksmiths  
Machinery Sales and Service  
Magazine and Newspaper Stores  
Meat Markets  
Medical Appliance and Supply Stores  
Millinery Shops  
Motor Vehicle Parts and Supply Stores  
Musical Instrument Sales and Service  
Newsstands  
Notions Stores  
Office Equipment and Supply stores  
Office Equipment and Repair Establishments  
Paint, Glass, and Wallpaper Stores  
Pawn Shops  
Pet Stores  
Pharmacies  
Phonograph, Records, Compact Discs, Tape, and Music Stores  
Photographic Processing Shops: Retail  
Photographic Processing Establishments  
Photographic Studios: Retail  
Picture Framing Shops

**Indoor Retail Sales and Service (continued)**

Plumbing Appliance and Equipment Store  
Radio Sales and Service  
Sewing Machine Sales and Service  
School Supply Stores  
Shoe Stores  
Souvenir and Curio Stores  
Sporting Goods Stores  
Stationery and Card Stores  
Swimming Pool Sales and Service  
Tailors and Dressmaking Shops  
Taxidermy Shops  
Telegraph Offices  
Telephone Sales and Service  
Televisions Sales and Service  
Ticket Agencies  
Toy Stores  
Tool Sales and Service  
Travel Agencies  
Veterinary Clinics  
Video and Equipment Sales and Service  
Water Softener Sales and Service

(Ord. 99-5, Appendix 1, May 24, 1999)

(Ord. 96-02, Appendix 1, March 25, 1996)

## APPENDIX 2:

### Washington Street Historic District Boundaries

#### Primary Boundary Description

Beginning at the intersection of the west right-of-way of Washington Street and the centerline of First Street; thence northeasterly 600 feet along the west right-of-way line of Washington Street; thence northwest parallel with the Indiana Cotton Mill 410 feet to the centerline of Adams Street; thence northeast 140 feet to the Cotton Mill property line; thence following said property line for the next three footages: southeast 257 feet; thence northeast 21 feet; thence southeast 118 feet to the west right-of-way of Washington Street; thence northeast along the west right-of-way of Washington Street 185 feet to the centerline of 4th Street; thence northwest 115 feet to the centerline of James Street; thence northeast along the centerline of James Street 308.5 feet; thence northwest 255 feet along the rear lot lines of lots #250, 249, 248, and the side lot of #245 to the centerline of Adams Street; thence northeast 440 feet to the centerline of State Road 66 (also known as 7th Street); thence southeast 40 feet to the side property line of lot #3; thence northeast along lot #3 126 feet to the right-of-way line of Richardson Street; thence southeasterly 240 feet along said right-of-way; thence northeast 60 feet crossing Richardson Street and continuing the same direction following the property line of St. Michael's Church 150 feet; thence east 90 feet; thence southeast 85 feet to Washington Street; thence crossing Washington Street southeasterly 230 feet; thence southwest 280 feet to the south right-of-way to Richardson Street; thence southeast 230 feet along said right-of-way to the centerline of Taylor Street; thence southwest along the centerline of Taylor Street 310 feet; thence southeast 200 feet along the centerline of Bry Street along George Meyers Grade School; thence southwest 160 feet to the centerline of 6th Street; thence northwest 200 feet to the centerline of Taylor Street; thence southwest along said centerline 220 feet to the centerline of 5th Street; thence northwest 280 feet to the south right-of-way of Lawrence Street; thence southwest 381 feet to the centerline of Church Street; thence southeast 67.5 feet to center lot #132; thence southwest 151 feet to the centerline of 3rd Street; thence northwest 37.5 feet; thence southwest 630 feet to the centerline of First Street; thence northwest 190 feet to the place of beginning.

(Ord. 96-02, Appendix 2 (page 1), March 25, 1996)

## **Secondary Boundary**

Beginning at the intersection of Adams Street and First Street; thence northeasterly 1,440 feet along the centerline of Adams Street; thence northwest 173 feet along the side of lot #29; thence northeast along the rear lot line of lots #29, 30, 31, a distance of 160 feet; thence northwest long the rear lot line of lots #21, 20, 19, 18, 17, 16, and also lots #21, 20, 19, 18, and 17 a distance of 800 feet to the west right-of-way of Mason Street; thence northeast 150 feet to the north right-of-way of State Road 66 (also known as 7th Street); thence southeast 15 feet to the north side property line of Erma Lee Weatherholt; thence northeast 215 feet along said property line to the south right-of-way of Richardson Street; thence along the south right-of-way of Richardson Street 1,250 feet; thence northeast 60 feet crossing Richardson Street and continuing in the same direction following the property line of St. Michael's Church 150 feet; thence east 90 feet; thence southeast 85 feet to Washington Street; thence crossing Washington Street southeasterly 230 feet; thence southwest 280 feet to the south right-of-way of Richardson Street; thence southeast 1,100 feet along said right-of-way to the west right-of-way of Hoskinson Street; thence southwest 190 feet to the south right-of-way of State Road 66; thence southeast 200 feet along the right-of-way of State Road 66; thence southwest 200 feet; thence northwest 200 feet; thence northeast 50 feet to north right-of-way of Bry Street; thence northwest along the north right-of-way of Bry Street 475 feet to the west right-of-way of Congress Street; thence southwest along Congress Street 175 feet to the centerline of 6th Street; thence northwest 115 feet to the centerline of Fuller Street; thence southwest 450 feet along the centerline of Fuller Street; thence southwest 450 feet along the centerline of Fuller Street to the centerline of 4th Street; thence northwest 37.5 feet; thence southwest 490 feet to the centerline of Smith Street; thence northwest 75 feet along Smith Street between lots #88 and 93; thence southwest 151 feet to the centerline of 2nd Street; thence northwest 75 feet; thence southwest 310 feet along the rear of lots #36 and 27 to the centerline of First Street; thence northwest 950 feet along the centerline of First Street to the place of beginning. Except that part as described as the Primary Boundary.

This is not a legal survey. Distances are approximate. Prepared by Lisa Gehlhausen, Indiana 15 Regional Planning Commission.

(Ord. 96-02, Appendix 2 (page 2), March 25, 1996)

## APPENDIX 3:

### List of Amendments to the Official Zoning Map

#### Plan Commission

<u>Case No.</u>	<u>Ordinance No.</u>	<u>Date Adopted:</u>	<u>Description:</u>
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(Ord. 96-02, Appendix 3, March 25, 1996)



## APPENDIX 4:

### List of Amendments to the Zoning Ordinance

#### Plan Commission

<u>Case No.</u>	<u>Ordinance No.</u>	<u>Date Adopted:</u>	<u>Description:</u>
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(Ord. 96-02, Appendix 4, March 25, 1996)

## APPENDIX 5:

### List of Approved Special Uses

Board of Zoning

Appeals Case No.      Date Approved:    Address/Location:      Description:

(Ord. 96-02, Appendix 5, March 25, 1996)

See Official Zoning Map at Cannelton City Hall.