

## CHAPTER 151: ZONING

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## **GENERAL PROVISIONS**

### **§ 151.001 TITLE.**

This chapter shall be known, cited and referred to as “The Town of Roseland Zoning Ordinance” (1989 Code, § 10-1) (Ord. 40A, passed 7-11-1966)

### **§ 151.002 DEFINITIONS.**

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

**ACCESSORY BUILDING OR USE.** One which:

- (1) Is subordinate to and serves a principal building or principal uses;
- (2) Is subordinate in area, extent or purpose to the principal building or principal use served;
- (3) Contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served; and
- (4) Is located on the same lot as the principal building or principal use served, with the single exception of such accessory off-street parking facilities as are permitted to locate elsewhere than on the same lot with the building or use served.

**ADULT BOOK STORE.** Any establishment having a significant portion of its stock in trade, books, magazines, other periodicals or any other publications which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or an establishment which sells or displays a significant number of such books, magazines, other periodicals or other publications.

**ADULT BUSINESS.** Any adult book store, adult mini motion picture theater, adult motion picture theater, adult cabaret or massage establishment.

**ADULT CABARET.** Any establishment at which topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers perform or at which topless dancing, go-go dancing, exotic dancing, striptease, male or female impersonation or similar activities are performed.

**ADULT MINI MOTION PICTURE THEATER.** An enclosed building having a seating capacity of 150 or less persons used for presenting material distinguished or characterized by an emphasis upon matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

**ADULT MOTION PICTURE THEATER.** An enclosed building having a seating capacity of more than 150 persons used for presenting material distinguished or characterized by an emphasis upon matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

**ADVERTISING DEVICE.** An advertising sign, billboard or poster panel which directs attention to a business, commodity, service or entertainment not exclusively related to the premises where such a sign is located or to which it is affixed; but does not include those advertising signs, billboards or poster panels which direct attention to the business on the premises or to a brand name of a product or commodity with which the business is specifically identified and which is sold on the premises.

**ALLEY.** A public right-of-way which normally affords a secondary means of access to abutting property.

**ANIMAL HOSPITAL.** A building or portion thereof designed or used for the care, observation or treatment of domestic animals.

**AUTOMOBILE LAUNDRY.** A building, or portion thereof, containing facilities for washing more than two automobiles, using production line methods with a chain conveyor, blower, steam cleaning device or other mechanical devices.

**AUTOMOBILE SERVICE STATION.** A building or portion thereof or premises used for dispensing, or offering for sale at retail, gasoline when stored only in underground tanks, kerosene, lubricating oil or grease, for operation of automobiles, and where tires, batteries and similar automobile accessories may be offered for sale on the premises at retail, including motor services and installations customarily incidental thereto; and facilities other than an automobile laundry, for washing cars, only if enclosed in a building. **AUTOMOBILE SERVICE STATIONS** do not include open sales lots as defined herein.

**AUTOMOBILE WRECKING YARD.** An area of land where two or more motor vehicles, or vehicles, machinery or equipment drawn or operated by attaching to motor vehicles or mechanical unit, not in running or operable condition, or parts thereof are stored in the open and any land, building or structure used for wrecking or storing of such motor vehicles, vehicles, machinery or equipment or parts thereof.

**BUILDING HEIGHT.** The vertical distance from the curb level to the highest point of the under side of the ceiling beams in the case of a flat roof; to the deck line of a mansard roof; and to the mean level of the under side of the rafters between the eaves and the ridge of a gable, hip or gambrel roof. Chimneys, spires, towers, elevator pent houses, tanks and similar projections other than signs shall not be included in calculating the **HEIGHT**.

**CONTROLLED USE.** Any use of property which is recognized as having serious objectional characteristics, particularly when several of them are concentrated, which have or may have a deleterious effect upon adjacent areas, specifically including, but not necessarily limited to:

- (1) Adult book store;
- (2) Adult mini motion picture theater;
- (3) Adult motion picture theater;
- (4) Adult cabaret;
- (5) Establishment for the sale of beer or intoxicating beverages for consumption on the premises, excluding restaurants at which the serving of such beverages is incidental to the serving of food as the principal activity;
- (6) Massage establishment;
- (7) Pawnshop;
- (8) Pool or billiard hall; or
- (9) Public dance hall.

**CURB LEVEL.** The level of the established curb in front of such building measured at the center of such front. (Where no **CURB LEVEL** has been established, the pavement elevation at the street centerline similarly measured, or the mean elevation of the finished lot grade immediately adjacent to a building shall be considered the **CURB LEVEL**.)

**DRIVE-IN ESTABLISHMENT.** One which accommodates on the lot its patron's automobiles, from which the occupants may watch, purchase and the like.

**DWELLING, MULTI-FAMILY.** A building consisting of three or more dwelling units, including condominiums, with varying arrangements of entrances and party walls.

**DWELLING, SINGLE-FAMILY.** A residential building unit designed or intended for occupancy by one family only. **SINGLE-FAMILY DWELLING** includes only site constructed homes; modular homes; and manufactured homes, Type A.

**FAMILY.** One or more persons related by blood, legal adoption or marriage, living and cooking as a single housekeeping unit, exclusive of household servants. A number of persons, but not exceeding three, living and cooking together as a single housekeeping unit though not related by blood, legal adoption or marriage, shall be deemed to constitute a **FAMILY**. A person or persons residing with a **FAMILY** as hereinabove defined by reason of placement by a publicly licensed placement agency shall be considered as members of that **FAMILY**. Four or more persons living and cooking together as a single housekeeping unit though not related by blood, legal adoption or marriage shall be deemed to constitute a multi-family household.

**FEDERAL INSURANCE ADMINISTRATION.** For purposes of this chapter, the administrative office for the National Flood Insurance Program. January 28, 2014.

**FLOOD.** A general and temporary condition of partial or complete inundation of normally dry land resulting from the overflowing of a river, stream or other body of water or the unusual or rapid accumulation of runoff surface water; the collapse or subsidence of land along the shore of a lake or other body of water resulting from erosion or undermining caused by waves or currents exceeding anticipated cyclical levels or by an unusually high water level accompanied by a severe storm or other force of nature. For purposes of this chapter, the **REGULATORY FLOOD** shall be the **100-YEAR FLOOD**.

**FLOOD HAZARD AREA.** The portion of a floodplain which is not adequately protected from flooding by means of dikes, levees, reservoirs or other works approved by the Natural Resources Commission.

**FLOOD PROTECTION GRADE.** The lowest elevation around the perimeter of a building at which flood water may enter the interior of the building.

**FLOOD WATER.** The water of any river or stream which is above its banks and/or outside its channels and banks. For purposes of this chapter, the **REGULATORY FLOOD** shall be the **100-YEAR FLOOD**.

**FLOODPLAIN.** The area adjoining a river or stream which has been or which may hereafter be flooded, so designated by the Federal Insurance Administrator.

**FLOODPROOFING.** A combination of structural and non-structural additions, changes or adjustments to properties and structures which minimize or eliminate flood damage to lands, water and sanitary facilities, structures and contents of buildings.

**FLOODWAY.** The channel of a river or stream and those portions of the floodplain which are reasonably required to efficiently carry and discharge the flood water of the river or stream, so designated by the Federal Insurance Administrator.

**FLOODWAY FRINGE.** The portion of a flood hazard area outside the limits of the floodway, so designated by the Federal Insurance Administrator.

**FLOOR AREA.**

(1) **FLOOR AREA** for determining floor area ratio, is the sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings.



(2) The **FLOOR AREA** of a building includes the basement **FLOOR AREA** when more than one-half of the basement height is above the established curb level, elevator shafts and stairwells at each floor, floor space used for mechanical equipment (except equipment, open or enclosed, located on the roof), penthouses, attic space having headroom of seven feet, ten inches or more, interior balconies and mezzanines, enclosed porches and floor area devoted to accessory uses. **FLOOR AREA** devoted to off-street parking or loading shall not be included in the **FLOOR AREA** of a building.

(3) The **FLOOR AREA** of structures devoted to bulk storage of materials, including, but not limited to, grain elevators and petroleum storage tanks, shall be determined on the basis of the height of such structure in feet; ten feet in height shall be deemed to be equal to one floor. If a structure measures more than five feet over such floor equivalent, it shall be construed to have an additional floor.

### ***FLOOR AREA OF A BUILDING.***

(1) For determining off-street parking and loading requirements, shall be the sum of the gross horizontal areas of the several floors of the building, or portions thereof, devoted to a specific use, including accessory storage areas located within selling or working space such as counters, racks or closets and any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

(2) **FLOOR AREA** shall not include:

- (a) Floor area devoted primarily to storage purposes, except as otherwise noted herein;
- (b) Floor area devoted to off-street parking or loading facilities, including aisles, ramps and maneuvering space; or
- (c) Basement floor area other than area devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

**FLOOR AREA RATIO.** The floor area of a building or buildings on a lot divided by the area of such lot. **FLOOR AREA RATIO REQUIREMENTS** shall be determine the maximum floor area allowable for the building or buildings, including both principal and accessory buildings, in direct ratio to the gross lot area.

### ***HOME OCCUPATION.***

(1) Any occupation or profession carried on by a member of the immediate family residing on the premises, in connection with which:

- (a) There is used no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling;
- (b) There is no commodity sold upon the premises;
- (c) No person is employed other than a member of the immediate family residing on the premises; and

(d) No mechanical or electrical equipment is used except such as is permissible for purely domestic or household purposes.

(2) A professional person may use his or her residence for consultation, emergency treatment or performance of religious rites but not for the general practice of his or her profession; no accessory building shall be used for such **HOME OCCUPATION**.

**JUNKYARD.** An open area where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including, but not limited to, scrap iron and other metals, paper, rags, rubber tires and bottles. A **JUNKYARD** includes an auto wrecking yard, but does not include uses established entirely within enclosed buildings, nor does it include an establishment engaged only in the processing of scrap iron or other metals to be sold specifically for the manufacture of steel or metal alloys.

**KENNEL.** Any premises or portions thereof on which more than four dogs, cats or other household domestic animals over four months of age are kept, or on which more than two such animals are maintained, boarded, bred or cared for in return for remuneration, or are kept for the purpose of sale.

**LOT AREA, GROSS.** The area of a horizontal plane bounded by the front, side and rear lot lines, but not including any area occupied by the waters of a duly recorded lake, river or floodplain area.

**LOT DEPTH.** The mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot boundaries.

**LOT LINE, FRONT.** The boundary of a lot which is along an existing or dedicated public street, or where no public street exists, is along a public way; where such public way is not a dedicated street. The right-of-way of such public way shall be deemed to be 60 feet, unless otherwise provided. (The owner of a corner lot may select either street lot line as the **FRONT LOT LINE**.)

**LOT LINE, REAR.** The boundary of a lot which is most distant from, and is, or is most nearly, parallel to, the front lot line.

**LOT OF RECORD.** A lot which is part of a subdivision, the plat of which has been recorded in the office of the Recorder of Deeds of the county; or a parcel of land, the deed to which was recorded in the office of said Recorder prior to the adoption of this chapter.

**LOT WIDTH.** The horizontal distance between the side lot lines of a lot, measured at the narrowest width within the first 30 feet of lot depth immediately in back of the required front yard setback line.

**MANUFACTURED HOME, TYPE A.** A manufactured home which:

- (1) Was constructed after January 1, 1981;
- (2) Has more than 950 square feet of occupied space and is composed of more than one section;
- (3) Is placed onto a permanent underfloor foundation in accordance with approved installation standards, as specified in § 151.153(A) (2);
- (4) Is placed onto a permanent perimeter enclosure, in accordance with approved installation standards, as specified in § 151.153(A) (1);
- (5) Has wheels, axles and hitch mechanism removed;
- (6) Has siding material of a type customarily used on site constructed homes, as specified in § 151.153 (B); and
- (7) Has roofing material of a type customarily used on site constructed homes, as specified in original § 151.153 (C).

**MASSAGE ESTABLISHMENT.** Any establishment, location or place where a person for any form of consideration whatsoever engages in, conducts, carries on or permits, be engaged in, conducted or carried on, massages or baths.

**MOBILE HOME.** A trailer designed and constructed for dwelling purposes.

**MODULAR HOME.** A dwelling unit, designed and built in a factory, for installation or assembly at the building site, and which bears a seal certifying that it was built in compliance with Indiana Public Law 360, Acts of 1971, as promulgated by the Indiana Administrative Building Council.

**MOTEL.** An establishment consisting of a group of attached or detached living or sleeping accommodations with bathroom and closet space, located on a single lot and designed for use by transient automobile tourists. In a **MOTEL** less than 50% of the living and sleeping accommodations are occupied or designed for occupancy by persons other than transient automobile tourists.

**MOTOR VEHICLE.** A passenger vehicle, truck, truck-trailer, trailer or semi-trailer propelled or drawn by mechanical power.

**NATIONAL MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS CODE.** Title VI of the 1974 Housing and Community Development Act (43 U.S.C. §§ 5401 et seq.), as amended (previously known as the Federal Mobile Home Construction and Safety Act), rules and regulations adopted thereunder (including information supplied by the home manufacturer, which has been stamped and approved by a Design Approval Primary Inspection Agency, an agent of the U.S. Department of Housing and Urban Development pursuant to HUD Rules), and regulations and interpretations of said code by the Indiana Administrative Building Council; all of which became effective for mobile/manufactured home construction on June 15, 1976.

**NATURAL RESOURCES COMMISSION.** The Natural Resources Commission of the state.

**NONCONFORMING BUILDING OR STRUCTURE.** A building or structure which:

(1) Does not comply with all of the regulations of this chapter or of any amendment hereto governing bulk for the zoning district in which such building or structure is located; or

(2) Is designed or intended for a nonconforming use.

**NONCONFORMING USE.** A use of land, buildings or structures which does not comply with all of the regulations of this chapter or of any amendment hereto governing use for the zoning district in which such use is located.

**OCCUPIED SPACE.** The total area of earth horizontally covered by the structure, excluding accessory structures, such as but not limited to garages, patios and porches.

**ONE- AND TWO-FAMILY DWELLING CODE.** The nationally recognized model building code prepared by the Council of American Building Officials, adopted by the Indiana Administrative Building Council (ABC) as mandated though Public Law 360, Acts of 1971, and which, includes those supplements and amendments promulgate by the ABC.

**OPEN SALES LOT.** Land used or occupied for the purpose of buying or selling merchandise stored or displayed out-of-doors prior to sale. (Such merchandise includes, but is not limited to, passenger cars, trucks, motor scooters, motorcycles, boats and monuments.)

**PERMANENT PERIMETER ENCLOSURE.** Permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground.

**PLAN COMMISSION.** The Area Plan Commission of St. Joseph County.

**REGULATORY FLOOD PROFILE.** A longitudinal profile along the thread of a river or stream showing the maximum water surface attained by the regulatory flood.

**SECTION.** A component of a manufactured home, type A, which is at least 12 body feet in width and 30 body feet in length and which does not by itself constitute a dwelling unit.

**SETBACK.** The minimum horizontal distance between the front line of a building or structure and the front property line.

**SITE CONSTRUCTED HOME.** A home, primarily constructed on the site where it is to be occupied, meeting the building codes in effect at the time of construction.

***SPECIFIED ANATOMICAL AREAS.*** Less than completely covered:

- (1) Human genitals, pubic region;
- (2) Buttock;
- (3) Female breast below a point immediately above the top of the areola; and
- (4) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES.***

- (1) Human genitals in a state of sexual stimulation or arousal; and
- (2) Acts of human masturbation, sexual intercourse or sodomy and fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

***STRUCTURAL ALTERATION.*** A change, other than incidental repairs which would prolong the life of the supporting members of the building, such as the addition, removal or alteration of bearing walls, columns, beams, girders or foundation.

***SUBSTANTIAL IMPROVEMENT.***

(1) For purposes of floodplain regulation, any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, excluding the value of the land, either:

- (a) Before improvement is commenced; or
- (b) Prior to damage, if the structure has been damaged and is being restored.

(2) ***SUBSTANTIAL IMPROVEMENT*** shall be considered to occur when the first alteration of any wall, ceiling or other structural part of the building commences. The term shall not include any repair, reconstruction or improvement of structures listed on the National Register of Historic Places or the State Inventory of Historic Places or structures designated as historic landmarks by the local legislative body.

***TOURIST HOME.*** A dwelling in which sleeping rooms are provided or offered to transient guests for compensation, not including a hotel, apartment hotel or motel.

***TRAILER.*** A vehicle, house, car, camp car or any portable or mobile vehicle on wheels, skids, rollers or blocks, either self-propelled or propelled by any other means, which is used or designed to be used for dwelling, lodging, commercial or agricultural purposes.

**USE, PERMITTED.** A use which may be lawfully established in a particular district or districts (provided it conforms with all requirements, regulations and performance standards, if any, of such district.

**USE, SPECIAL.** A use (either public or private) which, because of its unique characteristics, cannot be properly classified as a permitted use in any particular district or districts.

**WIRELESS COMMUNICATIONS FACILITY.** A tower or other structure on, upon or to which area attached or mounted transmitted equipment and/or antennas used in connection with the provision of communication services, including but not limited to, television, AM and FM radio, paging services, messaging services, cellular telephones, dispatch and/or two-way radio transmissions, wireless data, and microwave transmissions.

**ZONING BOARD.** The Board of Zoning Appeals of the Town of Roseland, Indiana.

**ZONING DISTRICT.** A section or sections of the incorporated territory of the town for which the regulations and requirements governing use, lot and bulk of buildings and premises are uniform. (1989 Code, § 10-2) (Ord. 03-2009, passed - - ; Ord. 40A, passed 7-11-1966; Ord. 75, passed 3-13-1975; Ord. 77, passed 4-14-1977; Ord. 78, passed 4-14-1977; Ord. 80, passed 6-9-1977; Ord. III, passed 7-8-1982; Ord. 168-90, passed 9-3-1990; Ord. 173-91, passed 10-10-1991; Ord. 213-96, passed 2-13-1997)

*Statutory reference:*

*Definitions of motor vehicles, see I.C. 9-13-2-105 (b)*

*Manufactured Homes, see I.C. 9-13-2-103.2*

### **§ 151.003 INTERPRETATION.**

(A) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare.

(B) Where the conditions imposed by any provision of this chapter, upon the use of land or buildings or upon the bulk of buildings, are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or of any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern.

(C) This chapter is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements, the requirements of this chapter shall govern.

(D) No building, structure or use which was not lawfully existing at the time of the adoption of this chapter shall become or be made lawful solely by reason of the adoption of this chapter and to the extent that, and in any manner that, said unlawful building, structure or use is in conflict with the requirements of this chapter, said building, structure or use remains unlawful hereunder.

(E) Within a special flood hazard area, the provisions of this chapter relative to land use and control and other measures designed to minimize or eliminate existing or potential flood hazards shall take precedence over any conflicting provisions of these zoning regulations.

(1989 Code, § 10-3) (Ord. 40A, passed 7-11-1966; Ord. 75, passed 3-13-1975)

#### **§ 151.004 SEPARABILITY.**

It is declared to be the intention of the Town Council that the several provisions of this chapter are separable, in accordance with the following.

(A) If any court of competent jurisdiction shall adjudge any provision of this chapter or amendments thereto to be invalid, such judgment shall not affect any other provisions of this chapter or amendment thereto, not specifically included in said judgment.

(B) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this chapter or amendments thereto 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.

(1989 Code, § 10-4) (Ord. 40A, passed 7-11-1966)

#### **§ 151.005 SCOPE OF REGULATIONS.**

(A) All buildings erected hereafter, all uses of land or buildings established hereafter, all structural alteration or relocation of existing buildings occurring hereafter shall be subject to all regulations of this chapter which are applicable to the zoning districts in which the building, uses or land shall be located. In a residential district, a single-family dwelling may be erected upon a lot of record existing on the effective date of this chapter even though such lot of record does not conform with the area in width requirements for the district in which such lot is located and provided that there is compliance with all other regulations contained in this chapter.

(B) Where the Building Commissioner of the town has been issued a permitted use permit, a special use permit or a permit for a variance pursuant to the provisions of this chapter, such permit shall become null and void unless work thereon is substantially underway within 12 months of the date of the issuance of such permit, or within the period of time beyond six months granted by the Board of Zoning Appeals for a specific permit.

(1989 Code, § 10-5) (Ord. 40A, passed 7-11-1966)

#### **§ 151.006 NUMBER OF BUILDINGS ON LOT.**

In residential districts not more than one principal detached dwelling shall be located on a lot, nor shall a principal detached dwelling be located on the same lot with any other principal building except as may be authorized as a special use in accordance with procedures set forth herein.

(1989 Code, § 10-6) (Ord. 40A, passed 7-11-1966) Penalty, see § 151.999

#### **§ 151.007 ACCESSORY BUILDINGS, STRUCTURES AND USES.**

(A) Accessory buildings, structures and uses shall be compatible with the principal use and shall not be established prior to the establishment of the principal use.

(B) No accessory building, structure or use shall encroach upon that side yard of a corner lot which is adjacent to the street, upon that side yard of a reversed corner lot which is adjacent to the street, upon that part of a rear yard, of a through lot, which is within 35 feet from the street line abutting the rear lot line, or upon a front yard, except as permitted herein for specific uses.

(C) No building or structure, accessory to dwelling uses, shall have more than one story nor exceed 17 feet in height unless otherwise permitted for authorized special uses.

(1989 Code, § 10-7) (Ord. 40A, passed 7-11-1966) Penalty, see § 151.999

### **§ 151.008 TRAILERS, MOBILE HOMES AND TENTS.**

(A) Trailers and mobile homes shall not be permitted in any district as accessory buildings.

(B)(1) Mobile homes or travel trailers shall not be parked or stored or occupied for dwelling or lodging purposes within the town.

(2) A mobile home or travel trailer, belonging to a guest of the occupant of a dwelling in a residential district may be parked and occupied for lodging purposes on the same lot as the dwelling but not for more than 24 hours in a 30-day period.

(C) Trailers or mobile homes may be used as temporary offices or storage space incidental to construction of a building development for a period of time such construction is actively undertaken provided the trailer or mobile home is located on the same lot as the building development.

(D) Tents shall not be erected, used or maintained for dwelling, lodging or other purposes.

(1989 Code, § 10-8) (Ord. 40A, passed 7-11-1966)

*Statutory reference:*

*Standards and requirements for manufactured homes built in compliance with Manufactured Housing*

*Construction and Safety Standard Laws of 1974 (42 U.S.C. §§ 5401 et seq., see I.C. 36-7-4-1106*



## ***NONCONFORMING BUILDINGS, STRUCTURES AND USES***

### **§ 151.020 STATEMENT OF PURPOSE.**

The purpose of this subchapter is to provide for the regulation of nonconforming uses, buildings and structures, and to specify those circumstances and conditions under which those conforming buildings, structures and uses shall be allowed to remain as legal nonconforming buildings, structures and uses.

(1989 Code, § 10-10) (Ord. 40A, passed 7-11-1966)

### **§ 151.021 AUTHORITY TO CONTINUE NONCONFORMING BUILDINGS, STRUCTURES AND USES.**

Any nonconforming building, structure or use, which existed lawfully at the time of the original adoption of this chapter, and which remains nonconforming, and any such building, structure or use, which shall become nonconforming upon the original adoption of this chapter, or of any subsequent amendment thereto, may be continued in accordance with the regulations which follow.

(1989 Code, § 10-11) (Ord. 40A, passed 7-11-1966)

### **§ 151.022 RESTRICTIONS ON NONCONFORMING BUILDINGS, STRUCTURES AND USES THEREOF.**

Any lawfully existing building or structure all or substantially all of which is designed or intended for a use not permitted in the district in which it is located shall, be subject to the following provisions.

(A) *Repairs and alterations.* No structural alterations shall be made in or to such building or structure, except those required by law, or except to make the building or structure, and use thereof, conform to the regulations of the district in which it is located. Ordinary repairs and alterations as determined by the Building Commissioner of the town may be made to such building or structure, and shall include, among other things, the replacement of storage tanks where the safety of operation of the installation requires such replacement.

(B) *Additions and enlargements.* Such building or structure shall not be added to or enlarged in any manner unless such building or structure, and use thereof, including all additions and enlargements thereto, is made to conform to all the regulations of the district in which it is located.

(C) *Relocation of building or structure.* Such building or structure (except a dwelling and its accessory buildings and building or structure used for the pursuit of agriculture), which is destroyed or damaged by fire or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence will exceed 50% of the cost of restoration of the entire building or structure new, shall not be restored unless said building or structure, and the use thereof, shall conform to all regulations of the district in which it is located. In the event that such damage or destruction is less than 50% of the cost of restoration of the entire building or structure new, no repairs or construction shall be made unless such restoration is started within one year from the date of the partial destruction and is diligently prosecuted to completion.

(D) *Discontinuance of use of nonconforming building or structure.* Such building, structure or portion thereof, which is vacant on the original effective date of this chapter, or thereafter becomes vacant and remains unoccupied, and in either case is not used for a continuous period of 180 days, shall not thereafter be occupied or used, except by a use which conforms to the use regulations of the district in which it is located.

(E) *Expansion of use in nonconforming building or structure.* The nonconforming use of a part of such building or structure may be expanded within the building or structure in which said use is presently located, but no changes or structural alterations shall be made unless such changes or structural alterations, and the use thereof, conforms to all the regulations of the district in which the building or structure is located.

(F) *Change of use in nonconforming building or structure.* The nonconforming use of such building or structure may be changed to a use permitted in the district in which the building or structure is located, provided the type of construction of such building or structure conforms with the County Building Code requirements for the use to which it is to be changed.  
(1989 Code, § 10-12) (Ord. 40A, passed 7-11-1966)

### **§ 151.023 NONCONFORMING USE OF CONFORMING BUILDING OR STRUCTURES.**

The lawfully existing nonconforming use of a part or all of a building or structure, all or substantially all of which building or structure is designed or intended for a use permitted in the district in which it is located, may be continued subject to the following provisions.

(A) *Expansion of nonconforming use.* The nonconforming use of a part of such building or structure shall not be expanded or extended into any other portion of such building or structure, nor changed to any other nonconforming use.

(B) *Discontinuance of nonconforming use.* If a nonconforming use of such building or structure is discontinued for a period of 90 days, it shall not be renewed, and any subsequent use of the building or structure shall conform to the use regulations of the district in which it is located.

(C) *Change of nonconforming use.* No nonconforming use shall be changed to another nonconforming use in such building or structure, and a nonconforming use of such building or structure may be changed to a use permitted in the district in which it is located even though the building or structure does not conform to the bulk requirements, except any additions or alterations of a building or structure shall comply with all regulations for the district in which it is located.

(D) *Elimination of nonconforming use.* In residential districts, any use which lawfully exists at the original date of adoption of this chapter, but is permitted only in a business, commercial or manufacturing district, and which is located in a building, all or substantially all of which is designed or intended for a residential purpose, shall be entirely discontinued within five years from the original date of adoption of this chapter, and shall thereafter cease operation.  
(1989 Code, § 10-13) (Ord. 40A, passed 7-11-1966)

### **§ 151.024 NONCONFORMING USE OF LAND.**

The nonconforming use of land not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of land, may be continued subject to the following provisions.

(A) *Expansion of nonconforming use.* A nonconforming use of land shall not be expanded or extended beyond the area it occupies.

(B) *Discontinuance of nonconforming use.* If a nonconforming use of land is discontinued for a period of 90 days it shall not thereafter be renewed, and any subsequent use of land shall conform to the regulations of the district in which the land is located.

(C) *Change of nonconforming use.* A nonconforming use of land shall not be changed to any other use except to a use permitted in the district in which the land is located.  
(1989 Code, § 10-14) (Ord. 40A, passed 7-11-1966)

### **§ 151.025 FLOODPLAIN MANAGEMENT PROVISIONS.**

(A) All buildings, structures or uses existing in a designated floodway or floodway fringe area which are not in full compliance with the provisions of this chapter relative to floodplain management shall be considered to be nonconforming.

(B) In addition to the provisions set forth in §§ 151.020 through 151.024, the following provisions shall be applicable to nonconforming buildings, structures or uses located within the F1 - Floodway and F2 - Floodway Fringe Districts.

(1) A nonconforming building, structure or use located within an F1 - Floodway District shall not be expanded or enlarged without a permit for construction in a floodway, issued by the Natural Resources Commission.

(2) A nonconforming building, structure or use, located within an F2 - Floodway Fringe District may be altered, enlarged or extended, on a one-time-only basis, provided that such alterations, enlargements or extensions do not increase the value of the property, excluding the value of the land, by more than 40% of its pre-improvement market value. Any alteration, enlargement or extension of a nonconforming building, structure or use which would constitute an increase in the value of the property, excluding the value of the land by more than 40% shall be in conformance with the provisions of this chapter.

(3) A nonconforming building, structure or use located within either an F1 - Floodway or F2 - Floodway Fringe District which is damaged by fire, flood, explosion, act of God or the public enemy may be restored to its original dimensions and conditions, provided the damage does not reduce the value of the building, excluding the value of the land, by more than 40% of its predamage value.

(1989 Code, §10-15) (Ord. 75, passed 3-13-1975)

*Cross-reference:*

*Floodplain Regulations, see §§ 151.205 through 151.236*

## ***ADMINISTRATION AND ENFORCEMENT***

### **§ 151.040 ORGANIZATION.**

The administration of this chapter is vested in four offices of the government of the town, as follows:

- (A) The Office of the Zoning Commissioner;
- (B) The Office of the Town Building Commissioner;
- (C) The Area Board of Zoning Appeals; and

(D) The Area Plan Commission of the county which has been designated by ordinance as the Planning Commission for the town.  
(1989 Code, § 10-19) (Ord. 159-90, passed 4-12-1990)

### **§ 151.041 OFFICES OF THE TOWN ZONING COMMISSIONER AND THE TOWN BUILDING COMMISSIONER.**

(A) *The Office of the Zoning Commissioner.*

(1) The Zoning Commissioner shall be a member of the Town Council, appointed by the Town Council and shall serve a term designated by the Council.

(2) In the event that the Zoning Commissioner becomes incapacitated and cannot designate an interim replacement from among the remaining Council members, the remaining Council members shall appoint another member to serve as the interim Zoning Commissioner until the Zoning Commissioner is able to resume his or her regular duties or until the present term expires.

(3) The Zoning Commissioner of the town shall:

- (a) Act as liaison for the town as prescribed in the town code of ordinances;
- (b) Enforce the zoning ordinances of the town as prescribed in the town code of ordinances;
- (c) Issue all building, demolition, mechanical and electrical applications or designate another Council member to issue another application and keep permanent records thereof. However, any application for construction that amounts to \$5,000 or more shall be discussed and voted on at an open Council meeting;
- (d) Issue all sign permits and keep permanent records thereof;
- (e) Conduct such inspections of buildings, structures and uses of land as are necessary to determine compliance with terms of the zoning ordinances;
- (f) Require citizens or businesses to produce valid building, mechanical, electrical,

sign or demolition permits upon requests;

(g) Order actions to correct violations of the zoning ordinances, with the advice of the Town Council and/or the Town Attorney;

(h) Maintain permanent records of zoning changes, special use grants and all zoning variances;

(i) Issue all zoning certificates and make and maintain records thereof;

(j) Maintain permanent and current records of this chapter, including, but not limited to, all maps, amendments, special uses, variances, appeals, applications therefor; and designate on zoning district maps each amendment, special use and variance with term of variance as granted subsequent to the original adoption of the ordinance codified herein, now this chapter;

(k) Provide and maintain a public information bureau relative to all matters arising out of this chapter;

(l) Determine use, lot and bulk requirements in specific instances, as stipulated herein; and

(m) Turn over all records to his or her successor upon completion of said term.

(B) *The Office of the Town Building Commissioner.* The Building Commissioner of the town, and such deputies or assistants as have been or shall be duly appointed by the Town Council shall be empowered to enforce this chapter and in addition thereto and in furtherance of such authority shall:

(1) Issue all zoning certificates and make and maintain records thereof;

(2) Issue all certificates of occupancy, and make and maintain records thereof;

(3) Conduct inspections of buildings, structures and use of land to determine compliance with the terms of this chapter;

(4) Maintain permanent and current records of this chapter, including, but not limited to, all maps, amendments, special uses, variations, appeals, applications therefor; and designate on Zoning District Map each amendment, special use and variation with term of variation as granted subsequent to the original adoption of this chapter;

(5) Provide and maintain a public information bureau relative to all matters arising out of this chapter;

(6) Receive, file and forward to the Board of Zoning Appeals applications for appeals, variations, special uses or other matters on which the Board of Zoning Appeals is required to pass under this chapter; and

(7) Determine use, lot and bulk requirements in specific instances, as stipulated herein. (1989 Code, § 10-20) (Ord. 40A, passed 7-11-1966; Ord. 159-90, passed 4-12-1990; Ord. 14-2008, passed 11-19-2009)

## § 151.042 BOARD OF ZONING APPEALS.

(A) *Creation.* Under the provision of the Acts of 1981, Publ. L. No. 309, § 23 of the Indiana General Assembly (I.C. 36-7-4-900 et seq.), a Board of Zoning Appeals is created. The Board shall consist of five members to be appointed by the Town Council.

(B) *Jurisdiction.* The Board of Zoning Appeals is vested with the following jurisdiction and authority:

(1) To hear and decide appeals from and review any order, requirement, decision or determination made by the Town Building Commissioner;

(2) To hear and decide all applications for variations from the terms provided in this chapter in the manner prescribed by and subject to the standards established herein;

(3) To hear and decide all applications for special uses in the manner prescribed by and subject to the standards established herein; and

(4) To hear and decide all matters referred to it or upon which it is required to pass under this chapter, as prescribed by state law.

(C) *Meetings and rules.* All meetings of the Board of Zoning Appeals shall be held at the call of the Chairperson, and at such times as the Board of Zoning Appeals may determine. All hearings conducted by said Board shall be open to the public. Any person may appear and testify at a hearing either in person or by duly authorized agent or attorney. The Board of Zoning Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall also keep records of its hearings and other official actions. A copy of every rule or regulation, order, requirement, decision or determination of the Board of Zoning Appeals shall be filed immediately in the office of the Town Building Commissioner, and shall be a public record. The Zoning Board shall adopt its own rules and procedures, not in conflict with this chapter or with applicable state statutes, and select or appoint such officers as it deems necessary, and existing rules of the Zoning Board shall be continued in force until revoked or modified.

(D) *Finality of decision of the Board of Zoning Appeals.* All decisions and findings of the Board of Zoning Appeals on appeals or upon application for a variation or a special use permit after a hearing, shall, in all instances, be final administrative decisions and shall be subject to judicial review as by law may be provided.

(E) *Record maintained.* The Board of Zoning Appeals shall maintain a record of all variance actions, including justification for their issuance, and shall include such information in the annual report submitted to the Federal Insurance Administration. A copy of said report shall also be sent to the National Resources Commission.

(1989 Code, § 10-21) (Ord. 40A, passed 7-11-1966; Ord. 77, passed 4-14-1977)

### ***Editor's note;***

*Ord. 43 passed by the Town Council on April 20, 1964, designated the St. Joseph County Building Commissioner as the "Office of the Town of Roseland Building Commissioner" as set forth in § 150.041 of this code of ordinances.*

*Statutory reference:*

*Board of Zoning Appeals, see I.C. 36-7-4-900 et seq.*

### **§ 151.043 PLAN COMMISSION.**

(A) *Creation.* The Plan Commission is the Area Plan Commission of the county.

(B) *Jurisdiction.* The Plan Commission shall have such powers and duties as prescribed by the Acts of 1981, Publ. L. No. 309, § 23 of the Indiana General Assembly (I.C. 36-7-4-200 et seq.), as amended, and these powers shall include but are not limited to the following:

(1) To receive from the Town Building Commissioner copies of applications for special uses and submit reports to the Board of Zoning Appeals setting forth its findings and recommendations in the manner prescribed in this section for special uses;

(2) To hear all applications for amendments to this chapter in the manner prescribed by the statutes of the state, and report findings and recommendations to the Town Council;

(3) To initiate, direct and review, from time to time, studies of the provisions of this chapter, and to make reports of its recommendations to such Town Council; and

(4) To hear and decide all matters upon which it is required to pass under this chapter and the statutes of the state.

(1989 Code, § 10-22) (Ord. 40A, passed 7-11-1966)

*Statutory reference:*

*Establishment and membership of commissions, see I.C. 36-7-4-200 et seq.*

### **§ 151.044 AMENDMENTS.**

(A) The Town Council may from time to time amend the provisions of this chapter or the districts established by this chapter, upon its own motion or upon the petition of the Plan Commission or upon the petition of 50% of the property owners in the area involved in such amendments.

(B) In any of such cases, the Town Council may act upon such amendment only after a report has been presented to them by the Plan Commission after public notice and a public hearing and in accordance with the provisions of the Acts of 1981, Pub. L. No. 309, •23 of the Indiana General Assembly (I.C. 36-7-4-600 et seq.), as amended.

(1) It is suggested that the petitioner consult informally with the Executive Director of the Area Plan Commission prior to the preparation of the rezoning petition.

(2) A rezoning petition shall be on the form approved, available in the Area Plan Commission office. All petitions for use districts other than R - Residential and other than those originated by the Area Plan Commission, shall be accomplished by an overall site development plan showing, but not limited to, the following: the proposed land uses, number, type and location of buildings, building heights, open space allocations, on-site parking provisions and parking ratio,

streets, setbacks, buffer strips, landscape planting areas, tabulated data giving the proposed number and type of units, gross acreage, proposed land coverage and the floor and land area by use.

(3) Rezoning to use districts other than R - Residential shall be accompanied by the data required herein and subject to the following procedure.

(a) Five copies of the completed petition to rezone subject to the site development plan shall be filed with the Town Clerk-Treasurer.

(b) 1. Four copies of such petition shall then be referred by the Clerk-Treasurer to the Area Plan Commission for a public hearing and its recommendation. The fifth copy of the petition shall be presented by the Clerk-Treasurer to the Town Council at its next regular meeting. After the Area Plan Commission has held its public hearing, it shall take the following action:

a. Recommend approval as tendered of the petition to rezone, subject to the site development plan;

b. Recommend approval subject to modification of the petition to rezone, subject to the site development plan; or

c. Recommend disapproval of the petition to rezone, subject to the site development plan.

2. In the event the Area Plan Commission desires to recommend approval subject to modification, such modification must be accepted by the petitioner prior to recommendation by the Area Plan Commission to the Town Council. Where approval is recommended by the Area Plan Commission, the site development plan shall be certified by the seal of the Area Plan Commission.

(4) The Town Council will act on the proposed petition to rezone subject to the site development plan.

(5) (a) If the petition to rezone subject to the site development plan is approved by the Town Council, a certified copy thereof shall be distributed to each of the following to ensure compliance therewith:

1. Area Plan Commission;
2. Town Building Commissioner; and
3. The petitioner.

(b) The Building Commissioner is thereafter authorized to issue a building permit in accordance with the site development plan for the rezoned property.



(6) For any change, modification or amendment to the site development plan, the petitioner shall submit a request in writing to the Area Plan Commission setting same forth in detail. Where the change, modification or amendment involves enlargement or relocation of buildings or uses, or where the Area Plan Commission in its sole discretion believes it advisable, the petitioner must file a new petition to rezone subject to the change, modified or amended site development plan and same will be determined in accordance with the procedure heretofore set forth.

(7) The rezoning ordinance subject to the site development plan shall constitute a limitation on the use of the premises therein contained and shall be binding on all.

(8) Approval shall be withdrawn, any issued building permit revoked and the original zoning classification reinstated if construction pursuant to the site development plan is not commenced within 12 months after the amendment to the zoning ordinance becomes law.

(C) The petitioner, or his or her successor in title, shall within 24 months after the amendment to the zoning ordinance becomes law, file with the Area Plan Commission a declaration under oath that the construction pursuant to the site development plan has been complete or shall file a declaration under oath that the construction pursuant to the site development plan has not been completed and shall state the reasons why said construction has not been completed. If the Area Plan Commission determines that the petitioner, or his or her successor in title, has failed to diligently pursue completion to the site development plan after construction is commenced, then it may withdraw approval, revoke any building permit that has been issued and order that the original zoning classification be reinstated. If the Area Plan Commission determines that the petitioner, or his or her successor in title, has diligently pursued completion pursuant to the site development plan after construction is commenced, then the Area Plan Commission may grant the petitioner, or his or her successor in title, a six-month extension, or such period of time beyond six months as may be requested by the petitioner or at the Plan Commission's own motion, to complete the construction pursuant to the site development plan.

(D) Any person who fails to conform to the provisions of the rezoning ordinance subject to the site development plan shall be ordered to cease and desist by the Building Commissioner and failing so to do, shall be required by the Area Plan Commission to show cause, if any he or she has, why approval should not be withdrawn, his or her building permit revoked or the original zoning classification reinstated.

(E) In division (A) above, it provides that the Town Council shall take no amendment action until after a report has been presented to them by the Plan Commission. Even if such report is unfavorable, the Town Council shall be entitled to take such amendment action. However, in the event that the report has been unfavorable, any such amendment action shall then be certified by the Town Council to the Plan Commission for its consideration accompanied by a written statement of the reasons for such action. The Plan Commission shall have 45 days in which to consider such enactment action and to make a report back to the Town Council. If the Plan Commission approves such action, it shall stand as passed by the Town Council as of the date of the recording of the Commission's report of approval to the Town Council. If the Plan Commission either disapproves or takes no action concerning such enactment during this 45-day period, such enactment of the Town Council shall stand only if confirmed by a resolution of the Town Council passed by a constitutional majority vote at a meeting held subsequent to this 45-day period.

(1989 Code, § 10-23) (Ord. 40A, passed 7-11-1966) Penalty, see § 151.999

## **§ 151.045 VARIATIONS.**

(A) *Purpose.* The Board of Zoning Appeals, after a public hearing, may determine and vary the regulations of this chapter in harmony with their general purpose and intent, where the Board of Zoning Appeals makes findings of fact in accordance with the standards hereinafter prescribed and further, finds that there are practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations of this chapter.

(B) *Application for variation and notice of hearing.* An application for a variation shall be filed in writing with the Building Commissioner. The application shall contain such information as the Board of Zoning Appeals may, by rule, require. Notice of the time and place of such public hearing shall be published as required by state law.

(C) *Standards for variation.* The Board of Zoning Appeals shall not vary the regulations of this chapter, as authorized in division (A) above unless it shall make findings based upon the evidence presented to it in each specific case that:

(1) The strict application of the terms of the zoning regulations will constitute an unusual and unnecessary hardship as applied to the property for which a variance is sought;

(2) The need for the variance arises from such condition peculiar to the property involved and does not exist in similar property in the same zone;

(3) The use or value of the area adjacent to the property included in the variance will not be adversely affected;

(4) The grant will not be injurious to the public health, safety, morals and general welfare of the community;

(5) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and

(6) In addition, the Board of Zoning Appeals shall notify the applicant for said variance in writing that the issuance of a variance to construct a structure below the base flood level will result in increased flood insurance premium rates and that such construction below the base flood level increases risks to life and property.

(D) *Decisions.* The concurring vote of three members of the Board of Zoning Appeals shall be necessary to grant a variation shall be valid for a period longer than six months from the date of such order unless the building permit is obtained within such period and the erection or alteration of a building is started or the use is commenced within such period.

(1989 Code, § 10-24) (Ord. 40A, passed 7-11-1966; Ord. 77, passed 4-14-1977; Ord. 112, passed 7-8-1982)

*Statutory reference:*

*Variances and related matters, see I.C. 36-7-4-900 et seq.*

## **§ 151.046 SPECIAL USES.**

(A) *Purpose.*

(1) The development and execution of this chapter is based upon the division of the town into two districts, within which districts the use of land and buildings, and the bulk and location of buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use of the particular location.

(2) Such special uses fall into two categories:

(a) Uses publicly operated or traditionally affected with public interest; and

(b) Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

(B) *Initiation of special use.* Any person having a freehold interest in land, or a possessory interest entitled to exclusive possession, or a contractual interest which may become freehold interest, or an exclusive possessory interest, which is specifically enforceable, may file an application to use such land for one more of the special uses provided for in this chapter in the zoning district in which the land is located.

(C) *Application for special use.* An application and two copies for a special use shall be filed with the Town Building Commissioner. The application shall be accompanied by such plans and/or data prescribed by the Board of Zoning Appeals, and shall include a statement in writing by the applicant and adequate evidence showing that the proposed special use will conform to the standards set forth in division (F) below. Such application shall be forwarded from the Town Building Commissioner to the Plan Commission with a request for a report relative thereto; a copy shall also be forwarded to the Board of Zoning Appeals who shall hold a public hearing. If a report is submitted by the Plan Commission, it shall be presented at the public hearing and become part of the record.

(D) *Hearing on application for special use.* Hearing on application for special use shall be pursuant to state law, and by rules adopted by said Board of Zoning Appeals.

(E) *Decisions.* The concurring vote of three members of the Board of Zoning Appeals shall be necessary to grant a special use permit. No order of the Board of Zoning Appeals granting a special use permit shall be valid for a period longer than six months from the date of such order unless the Board of Zoning Appeals specifically grants a longer period of time or a building permit is obtained within the six-month period and construction is diligently being prosecuted to completion within a period not longer than one year after the date of the building permit.

(F) *Standards.* No special use shall be granted by the Board of Zoning Appeals unless such Board shall find:

(1) The establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;

(2) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;

(3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;

(4) That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided; and

(5) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.  
(1989 Code, § 10-25) (Ord. 40A, passed 7-11-1966)

#### **§ 151.047 APPEALS.**

(A) *Scope of appeals.* An appeal may be taken to the Board of Zoning Appeals by any person, firm or corporation, or by any office, department, board or bureau aggrieved by a decision of the Office of the Town Building Commissioner. Such an appeal shall be taken within such time as shall be prescribed by the Board of Zoning Appeals by filing with the Office of the Town Building Commissioner a notice of appeal specifying the grounds thereof. The Town Building Commissioner shall forthwith transmit to the Board of Zoning Appeals all of the papers constituting a record upon which the action appealed from was taken.

(B) *Hearing on appeals.* Hearing on appeals shall be pursuant to state law, and by rules adopted by said Board of Zoning Appeals.  
(1989 Code, § 10-26) (Ord. 40A, passed 7-11-1966)

#### **§ 151.048 EFFECT OF DENIAL OF VARIANCE OR SPECIAL USE.**

No application for a variance or a special use which has been denied wholly or in part by the Board of Zoning Appeals shall be resubmitted for a period of six months from the date of said order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the Board of Zoning Appeals.  
(1989 Code, § 10-27) (Ord. 40A, passed 7-11-1966)

## ***SIGN REGULATIONS IN GENERAL***

### **§ 151.060 DEFINITIONS.**

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

***BUILDING FACADE.*** The portion of any exterior elevation of a building extended from grade to the top of the parapet wall or eaves and the entire width of the building elevation, and which may also be referred to as the ***BUILDING FACE.***

***COPY AREA.*** The sum of the area of the words or numbers included in the sign copy, inclusive of logos, trademarks or other advertising symbols, but exclusive of pictorials, supergraphics or purely decorative, non-advertising displays.

***DISPLAY AREA.*** The total area upon which a sign copy may be placed in computing the total display area of a sign, mathematical closest to the extremities of the sign, excluding any structural members or embellishments, shall be used.

***EMBELLISHMENT.*** An addition to the display area on which a continuation of an advertising message may be placed. Such addition shall not be a continuous border which would constitute an increase in the display area. Standard bases and standard trim shall not be considered ***EMBELLISHMENTS.***

***SIGN.*** A structure, including the frame and supports of such containing any printed text, pictorial representation, emblem or other object, and which is used to identify, instruct, attract, guide or advertise. (1989 Code, ● 10-35) (Ord. 105, passed 8-13-1981)

### **§ 151.061 USES OF SIGNS; MAJOR CATEGORIES.**

For the purpose of this subchapter, uses of signs shall be identified as follows:

(A) *Commemorative, historical or memorial signs.* A sign, marker or plaque erected by an authorized body for purposes of identifying a commemoration, designated historical landmark or memorial;

(B) *Development sign.* A temporary construction sign denoting the architect, engineer, contractor, subcontractor, financier or sponsor of a development and designating the future occupant or use of the development;

(C) *Directional sign.* A sign of eight square feet or less containing information relative to the location, distance to, entrance and exit from structures, sites or land use activities;

(D) *Institutional bulletin.* A sign of any governmental agency, religious group, hospital or school, located on the premises and bearing only information, related to the activities conducted on the premises, persons involved or other such information;

(E) *On-premises identification sign.* A sign which identifies or advertises the profession, land use activity, individual, product or service occupying or available on the premises;

(F) *Outdoor advertising sign.* An off-premises sign which directs attention to businesses, products, services or establishments not usually conducted on the premises on which the sign is located and which, for the purposes of this chapter, shall be considered a principal use;

(G) *Public information sign.* A sign containing emergency or legal notices and regulatory information, erected by a unit of government or any of its agencies or departments;

(H) *Real estate sign.* A sign advertising the fact that the premises on which it is located is for sale, lease or rent; and

(I) *Temporary sign.* A display, informational sign, banner or other advertising device with or without a structural frame, not permanently attached to a building, structure or the ground, and intended for a limited period of display, including decorative displays for holidays.  
(1989 Code, § 10-36) (Ord. 105, passed 8-13-1981)

## § 151.062 STRUCTURAL TYPES OF SIGNS.

For purposes of this subchapter, signs shall be classified according to their structural type:

(A) *Fascia sign.* A single-face sign which is in any manner attached or affixed to an exterior wall of a building or structure or mounted above or below a canopy and which projects not more than 18 inches from and does not extend more than six inches above the parapet line, eaves or building facade. Individual letters, in addition to the “box type” sign, may also be installed as a fascia sign;

(B) *Flashing sign.* An illuminated sign on which the artificial light is not maintained stationary or constant in intensity or color;

(C) *Freestanding sign.* A sign supported by one or more uprights, poles, columns or braces placed in or upon the ground surface and not attached to any building or structure;

(D) *Illuminated signs.* A sign illuminated by gas, electricity or other artificial light, including reflective or phosphorescent light;

(E) *Marquee or canopy sign.* A sign attached or applied above or below a marquee, canopy, awning or other rooflike structure;

(F) *Mobile sign.* A sign permanently mounted on a chassis and parked on the premises, usually on a temporary basis;

(G) *Multi-face sign.* A sign, more than one side of which is visible. A **V-TYPE SIGN** shall be considered a multi-face sign, provided the least angle of intersection does not exceed 90 degrees;

(H) *Portable sign.* A multi-face sign, other than a mobile sign, not permanently anchored or secured to either a building or the ground;

(I) *Projecting sign.* A multi-face sign, end-mounted to an exterior wall of a building or structure

and which projects out from the wall more than 18 inches;

(J) *Roof-mount sign.* A sign erected wholly upon or over a roof of any building; and

(K) *Single-face sign.* A sign, only one side of which is visible.  
(1989 Code, § 10-37) (Ord. 105, passed 8-13-1981)

### ***SPECIFIC SIGN PROVISIONS***

#### **§ 151.075 INTENT.**

It is recognized that certain uses located in approximately zoned districts need and have a right to advertise through the use of sign displays. It is the intent of this subchapter to encourage creative and imaginative design and use of signs in order to create a more attractive economic and business climate. It is further the intent of this subchapter to foster and improve the economic vitality of the community by enhancing and protecting the physical appearance of the community. In order to accomplish this purpose, it is necessary to regulate the size, location, construction and manner of display of signs as set forth in this subchapter.  
(1989 Code, § 10-38)

#### **§ 151.076 GENERAL PROVISIONS.**

(A) All signs, permanent and temporary, constructed, connected, operated and maintained in the town shall be constructed, connected, operated and maintained according to the specifications of the Building and Electrical Codes of the town.

(B) All signs shall be maintained in a good state of repair. Painted faces or structural members shall be repainted whenever peeling or fading occurs. Neon tubes, lamps, ballasts and transformers shall be kept in a good state of repair and safe condition. The town may order the removal of any sign which becomes a public hazard due to lack of maintenance or repair or which becomes insecure, in danger of falling, or otherwise unsafe.

(C) The following provisions shall apply to freestanding on-premises signs.

(1) The sign, pole or standard shall not extend beyond the property line or into the public right-of-way.

(2) Freestanding signs shall be designed so that all framework for the lateral support of the signs shall be contained within the body of the sign or within the structure to which it is attached and shall not be visible. Exposed guy wires, chains or other connections shall not be made a permanent part of the sign.

(3) (a) The maximum height of freestanding signs located along other than limited-access highways shall vary with the width of the lot on which the sign is located, as follows;

<i>Lot Width</i>	<i>Maximum Height</i>
0-50 feet	30 feet

51-100 feet	30 feet
101-200 feet	30 feet
Over 200 feet	30 feet

(b) Along limited access highways, the maximum height of freestanding signs shall be 85 feet, subject to approval by the Town Council, provided that:

1. Such signs shall identify highway-oriented uses, such as automobile service stations, motels and restaurants, located within 2,000 feet of the centerline of the interchange; and

2. A variance may be granted by the Board permitting signs in excess of 85 feet where a physical obstruction exists which otherwise restrict the visibility of the sign, provided that in no case shall the visual height of the sign as viewed from the highway, exceed 85 feet above the grade of the highway.

(4) Freestanding signs which function as directional signs shall have a maximum height of four feet.

(D) The following provisions shall apply to marquee or canopy signs.

(1) One sign shall be permitted for each entrance to the building or structure to which the sign is attached.

(2) The display area of such signs shall not exceed eight square feet per sign face, except that individual letters or symbols painted, stenciled or otherwise applied to awnings and not exceeding three inches in height shall not be included in this provision.

(3) No sign shall extend beyond the outer edge of the marquee or roofed structure.

(4) There shall be at least a 12-foot clearance between the grade of the sidewalk and the lowest point of the sign.

(E) Projecting signs shall be permitted as follows.

(1) One projecting sign shall be permitted for each ground floor use in a building or structure.

(2) Where a use has such frontage on more than one street, there may be one projecting sign for each frontage, provided that only a sign computed for the frontage of a street shall face that street, or there may be one corner projecting sign, which shall be computed on the basis of one-half the frontage of the use on both streets.

(3) It is the intent of this division (E) to encourage, wherever it is feasible, the use of lateral supports that are contained within the framework of the sign frame. Where additional side bracing is required, guy wires and not chains, shall be used.

(4) The height of the projecting sign shall not exceed eight feet above the parapet wall of



the building, and the lowest point of the projecting sign shall be not less than ten feet above the grade.

(5) The projection of projecting signs shall be limited by the more restrictive of the following:

(a) No projecting sign shall project further than one-half the distance from the sign location to the nearest side building line; or

(b) The projection of projecting signs shall be limited to eight feet three inches.

(F) Roof-mount signs shall not be permitted, except where such signs appear to be architectural and integral part of the building and further provided that:

(1) All structural members shall be effectively hidden from view;

(2) The maximum height of such signs shall be six feet; and

(3) Such signs shall be on-premises signs only.

(G) Illuminated signs shall be illuminated only by direct or indirect lighting sources, provided that the beam from an indirect source shall be effectively concealed from view. Strobe lights shall not be permitted.

(H) Temporary signs shall be permitted, provided that:

(1) There shall not be more than one such sign per frontage;

(2) A temporary sign shall not exceed 50 square feet in display area; and

(3) Before displaying a temporary or portable sign on property owned or leased by the person or business seeking to display such a sign, that person or business must obtain a permit through the town by submitting an application for such a sign to the Zoning Commissioner or the town.

(a) The Zoning Commissioner shall review the application within ten working days of the receipt of such application. If approved, a fee of \$10 shall be paid by the applicant to the Clerk-Treasurer of the town who will then issue the permit;

(b) Such permits shall be valid for a period of 30 consecutive days. No person or business who has received such a permit shall apply for another such permit for the same location for a period of 120 days after the expiration date of the last such permit issued;

(c) Such permits are not transferable; and

(d) Such permit showing the period of time during which the sign is permitted shall be posted in a conspicuous location within the business building or be considered in violation of this division; and

(e) Any person or business who displays a temporary or portable sign and fails to obtain a permit for such a sign in the manner described above may be liable for a fine not to exceed \$50 per day, and that each day constitutes a separate offense, and may be denied temporary sign

privileges for a period not to exceed six months.

(4) A temporary sign shall be located a minimum of 20 feet from the right-of-way line, unless the distance between the right-of-way line and the building facade is insufficient to accommodate the 20-foot required setback. However, said sign shall not encroach upon or block any pedestrian right-of-way.

(5) Exposed lamps shall be covered with a sunshade. Lamps shall not exceed 25 watts and shall be of the incandescent type only.

(I) Permanent signs shall be permitted provided that:

(1) Before displaying a permanent sign on property owned or leased by the person or business seeking to display such a sign, that person or business must obtain a permit through the town by submitting an application for such a sign to the Zoning Commissioner of the town;

(2) The Zoning Commissioner shall, within ten-working days of the receipt of such application, approve or deny the application. If approved a fee of \$50 shall be paid by the applicant to the Clerk-Treasurer of the town who will then issue the permit; and

(3) Such permits are not transferable.  
(1989 Code, § 10-39) (Ord. 178-92, passed - -; Ord. 105, passed 8-13-1981; Ord. 113, passed 7-8-1982; Ord. 160-90, passed 4-12-1990) Penalty, see § 151.999

**§ 151.077 PERMITTED SIGNS.**

(A) *Business signs.* Business signs and advertising devices are permitted subject to the following conditions.

(1) No business sign or advertising sign shall be erected or relocated within 25 feet of any street or highway.

(2) No advertising device shall be permitted within 100 feet of any residential district boundary line.

(3) The gross area in square feet of all signs on a lot shall not exceed six times the lineal feet of frontage of such lot. However, the gross area of all advertising devices shall not exceed three times the lineal feet of frontage of such lot or one standard sign structure of maximum size, whichever is lesser.

(4) No sign shall be mounted more than 18 inches from the face of the wall of any building or structure.

(5) A business sign may be located on a building roof provided it is not higher than six feet above building height.

(6) Any sign located within three feet of a driveway, parking area or within 50 feet of the intersection of two or more streets, shall have the lowest elevation of at least 12 feet above the curb level.

(B) *Agricultural district.*

(1) Development signs, provided that:

(a) Such signs shall be temporary and shall be displayed on the construction site only for the duration of the construction; and

(b) The maximum display area of such signs shall be 100 square feet.

(2) Directional signs;

(3) Commemorative, historical and memorial signs, markers and plaques not exceeding six square feet in display area and containing no advertising material thereon;

(4) Identification signs, denoting the names of occupants and/or professions, not exceeding one square foot in display area;

(5) Identification signs for real estate development, provided that there shall not be more than one such sign, a maximum of 32 square feet in copy area, or two such signs, a maximum of 16 square feet each in copy area, and containing no advertising material, except the name and street address of the development, located at each of the principal entrances;

(6) Institutional bulletins, not exceeding 32 square feet in copy area;

(7) Public information signs;

(8) Real estate signs, provided that:

(a) Such signs shall be located on a paint exposure form as permitted under the provisions of the town zoning regulations; and

(b) A single non-flashing, non-illuminated identification sign, not exceeding 50 square feet in display area or projecting more than ten feet above the ground elevation shall be permitted.

(9) Seasonal decorations and displays, provided that such signs shall be temporary; and

(10) Signs for the purpose of outdoor testing of paints, provided that:

(a) Such signs shall be located on a paint exposure form as permitted under the provisions of the town zoning regulations;

(b) A single non-flashing, non-illuminated identification sign, not exceeding 50 square feet in display area or projecting more than ten feet above the ground elevation shall be permitted; and

(c) The paint exposure panels shall not project more than eight feet above the ground elevation.

(C) *Commercial districts.*

(1) All signs permitted in the A - Agricultural District, except signs for the purpose of outdoor testing of paints (division (B)(10) above) shall not be permitted in the C - Commercial District;

(2) One freestanding sign to identify a planned commercial development, not exceeding 50 square feet in area. There may be one such sign per frontage;

(3) All double face on-premises signs, including projecting and non-projecting, freestanding and building-mounted shall be limited in area as follows:

(a) The total display area of all double face on-premises signs shall not exceed two square feet for each lineal foot of lot frontage; and

(b) In computing the display area, only the display area of one face of a double face sign shall be counted.

(4) The copy area of a single face on-premises sign shall not be larger than 40% of the portion of the facade which is ten feet above the grade.

(5) (a) *Proportional regulations.* The size of an outdoor advertising sign on a lot shall not exceed the size specified in the following table:

<i>Lot Size (In Square Feet)</i>	<i>Maximum Sign Dimensions (Vertical by Horizontal)</i>

Up to 10,000	6 feet by 12 feet
10,000+ - 20,000	12 feet by 12 feet
20,000+ - 43,560	12 feet by 25 feet
43,560+	12 feet by 50 feet

(b) *Outdoor advertising sign size.* The face of an outdoor advertising sign shall not be greater than 12 feet vertical dimension not greater than 50 feet in horizontal dimension, except where specifically regulated and shall not contain more than one advertising signs per face.

(c) *Distance between outdoor advertising signs.* Except as otherwise provided for signs in the protected areas along highways, freeways and expressways, the minimum distance between outdoor advertising signs shall be as specified below.

1. *Linear spacing between outdoor advertising signs.* The minimum distance between outdoor advertising signs located along and oriented towards the same public street shall be 2,640 feet subject to the following:

a. The spacing requirement shall be applied regardless of whether the signs are on the same side of the street.

b. The spacing requirement shall be applied continuously along a street to all signs oriented toward that street in either direction whether the signs are in the same block or are in different blocks separated by an intersecting street.

c. For purposes of applying the spacing requirement to outdoor advertising signs, pole, wall, ground and projecting signs shall be treated the same.

2. *Radical spacing between outdoor advertising signs.* In no event shall any point of an outdoor advertising sign or sign structure be closer than 500 feet from any point of any other outdoor advertising sign or sign structure regardless of location or orientation.

3. *Method of measurement.* The method of measurement of the spacing between outdoor advertising signs oriented toward the same street shall be along the center line of the street to which the sign is oriented from the point the streets center line closest to the leading edge of the sign.

(d) *Outdoor advertising signs adjacent to protected district.* No outdoor advertising sign shall be located within 250 feet of any protected district fronting on the same street to which the sign is oriented measured along the center line of the street to which the sign is oriented from the point in the street's center line that is closest to the leading edge of the sign. In no case, however, shall any outdoor advertising sign be located within 250 feet of any protected district measure in any direction. For the purposes of this section, a protected district shall include any residential use.

(e) *Outdoor advertising signs along toll road.* No outdoor advertising sign shall be erected or otherwise located within 600 feet of the right-of-way of the Indiana Toll Road, so as to be oriented to traffic on such toll road.

(f) *Signs on freeways and expressways.* In addition to the requirements of this

section, outdoor advertising signs shall further comply with other provisions when located on freeways and expressways.

(g) *Rooftop outdoor advertising signs.* Rooftop outdoor advertising signs shall not be permitted in any zoning district.

(h) *Outdoor advertising sign setback.* Signs or sign structures shall be set back in accordance with the building setback lines required by the applicable zoning district.

(i) *Maximum and minimum height of outdoor advertising signs and sign structures.*

1. Maximum height of signs and sign structures shall not exceed 40 feet above grade level at the base of such sign or sign structure.

2. No outdoor advertising sign or sign structure (except for the supports, building, structure or column) shall be at its lowest point less than nine feet above grade level. Ground signs, where permitted, shall not exceed four feet in height above grade level.

(j) *Construction of outdoor advertising signs.* The supports, uprights, bracing and framework of an outdoor advertising sign shall be of steel construction.

(k) *Maintenance and non-conformity.*

1. All signs and sign structures shall be kept in repair and in proper state of preservation.

2. Any signs remaining blank for more than 60 days shall be removed at the owner's expense.

(6) Directional signs shall be permitted, provided that:

(a) There shall be a maximum of two such signs located at each curb cut; and

(b) Such signs shall contain no advertising with the exception of the name of the use located on the premises.

(D) *Residential districts, signs permitted.*

(1) Real estate sales signs shall be permitted;

(2) Fascia signs provided that:

(a) There shall be no more than one non-illuminated sign, a maximum of one foot by two foot in area, for home occupation only;

(b) The sign shall be attached to the building facade; and

(c) The Zoning Commissioner shall review the application within ten working days of the receipt of such application. If approved, a fee of \$10 shall be paid by the applicant to the Clerk-Treasurer of the town.

(3) Garage sale, estate sale, rummage sale and auction sale signs and posters, provided that such signs/posters are erected no earlier than five days before the sale which they pertain, and further, that such signs are removed no later than three days after said sale;

(4) Political campaign signs as prescribed in • 151.079(B)(9);

(5) Billboard signs presently existing; and

(6) No signs other than real estate sales signs shall be permitted.  
(1989 Code, § 10-40) (Ord. 105, passed 8-13-1981; Ord. 172-91, passed 6-13-1991; Ord. 190-94, passed 4-14-1994; Ord. 204-96, passed 4-11-1996; Ord. 234-01, passed 5-9-2002)

### **§ 151.078 SIGNS NOT PERMITTED IN ANY DISTRICT.**

(A) Banners, pennants and streamers shall not be permitted except:

(1) Flags and banners of the United States, the state or any other political entity, religious or fraternal organization; or

(2) Banners, pennants and streamers permitted under a temporary sign permit.

(B) Permanent window signs located above the ground floor level in a building for the purpose of being viewed from outside the building;

(C) Portable and mobile signs shall not be permitted, except under a temporary sign permit;

(D) Signs which are structurally unsafe, as determined by the Town Building Commissioner;

(E) Signs obstructing free ingress or egress from a required exit, or which prevent light or ventilation as required in local codes and ordinances;

(F) Signs which by reason of size, location, content, coloring or illumination, violate municipal and state highway standards;

(G) Signs bearing words, phrases, symbols, colors or characters which mislead interfere with or confuse traffic;

(H) Signs erected on or attached to any sidewalk, street or highway right-of-way, curb, curbstone, hydrant, lamp post, tree, barricade, temporary walkway, telephone, telegraph or electric light pole, public fence or on a fixture of the fire alarm or police systems except public information signs; and

(I) Signs which involve revolving or rotating beams of light.  
(1989 Code, § 10-41) (Ord. 105, passed 8-13-1981)

### **§ 151.079 ADMINISTRATION.**

(A) *Generally.* After the original effective date of this subchapter, no sign, permanent or temporary, shall be erected except in accordance with the provisions of this subchapter, as authorized by the issuance of a sign permit or temporary sign permit.

(B) *Sign permit not required.* The following shall not require permits:

(1) Ordinary maintenance and repair to existing signs, provided that such work does not affect the structure to a degree greater than 25% of the current replacement cost, exclusive of the structural support of the sign;

(2) Change of copy on signs listing current or future programs and events taking place on the premises;

(3) Seasonal decorations and displays, provided they conform to the provisions of this subchapter;

(4) Real estate signs, provided they conform to the provisions of this subchapter;

(5) Street signs erected by a subdivider or by the municipality for the purpose of street identification;

(6) Public information signs;

(7) Directional signs;

(8) Rotation, repainting and posting of copy; and

(9) (a) Political campaign signs and posters, other than those placed on outdoor advertising structures, provided that such signs are erected no earlier than 60 days before the election to which they pertain and, further, that such signs are removed no later than 15 days after said election.

(b) Political campaign signs and posters placed on outdoor advertising structures shall be governed in their size, location, permit requirements and the like, in accordance with the provisions of this subchapter relative to outdoor advertising signs.

(C) *Application.* Applications for a sign permit shall be made through the Town Zoning Commissioner and include the following information:

(1) Location of the building, structure or land to or on which the sign is to be erected;

(2) The dimensions of the sign and where applicable, the dimensions of the wall surface of the building to which it is to be attached;

(3) The dimension of the sign's structural members;

(4) The proposed location of the sign in relation to the face of the building or to the lot lines of the property on which it is to be located, whichever is applicable;

(5) Proof of licensing of the sign contractor to conduct business in the county; and



(6) Statements by the owner, in written form, that:

(a) The town shall be held harmless from any claims, damages, liabilities, losses, actions, suits or judgments which may be brought, presented or obtained against the town or its officials because of negligence of the sign hanger, contractor or his or her agents, or by reason of defects in the construction, or damages, resulting from the collapse or failure of any sign;

(b) The owner will guarantee removal of the sign when the use which it identifies, instructs, attracts, guides or advertises is terminated at that particular location;

(c) The owner shall maintain the sign by representing peeled surfaces and replacing inoperative components. Should the owner fail to maintain the sign as outlined herein within a reasonable time, the town shall remove the sign after first giving the owner of the sign 30-days written notice of its intent to do so. Said removal shall be at the cost of the owner of the sign.

(D) *Procedure.*

(1) The Zoning Commissioner, with the concurrence of the Town Council, shall review an application for a sign permit and issue such permit in accordance with the provisions of this subchapter or deny the application within 30-working days of its receipt.

(2) A sign permit shall become null and void unless work thereon is substantially underway within four months of the issuance of said permit, provided, however, that when a sign permit is issued in connection with a building permit for the site on which the sign is to be located, the sign permit shall run concurrent with the building permit. The holder of a sign permit may apply through the Zoning Commissioner for a three month extension on the permit within ten working days of the expiration date. A sign permit shall be renewed only once, after which time the permit shall be null and void.

(3) Temporary sign shall be issued a permit for a 30-day period. The holder of a temporary sign, however, before installing said sign on the property which he or she owns or leases, shall obtain a permit through the Town Council by submitting to the Town Council an application pursuant to the application procedures set forth herein together with a \$10 permit fee.

(4) The applicant may appeal a decision of the Zoning Commissioner to deny a sign permit or temporary sign permit before the Town Council; provided, however, that the Town Council is empowered to overturn the decision of the Zoning Commissioner and issue the sign permit or temporary sign permit only in instances when the size, location, construction or manner of display of the proposed sign is wholly in conformance with the provisions of this subchapter.

(E) *Variances.* All variances shall be obtained as set out in § 151.045, as it may be amended from time to time, through the Area Board of Zoning Appeals.

(F) *Other relief.*

(1) The Town Council is not required and shall have no power or authority to hear and determine petitions for special uses and special exceptions to the terms of this subchapter which relate to signs and outdoor advertising.

(2) (a) Relief from other provisions of this subchapter may be sought by filing a petition with the Area Plan Commission staff for review and recommendation.

(b) Copies of all petitions filed with the Area Plan Commission shall be provided to the Clerk-Treasurer of the town.

(1989 Code, §10-42) (Ord. 105, passed 8-13-1981; Ord. 159-90, passed 4-12-1990)

#### **§ 151.080 INSPECTION.**

(A) The Zoning Commissioner shall have the right of entry in order to inspect all signs for compliance with the provisions of local codes and ordinances.

(B) When any sign is not maintained in a good state of repair as provided in this subchapter, or when any sign becomes insecure, in danger of falling, or otherwise unsafe, the Zoning Commissioner shall send written notice to the owner of the sign to remove, change or alter the sign. If said sign is not so removed, changed or altered within ten working days, the Zoning Commissioner shall cause the sign to be removed at the expense of the owner of the sign.

(1989 Code, § 10-43) (Ord. 105, passed 8-13-1981; Ord. 159-90, passed 4-12-1990) Penalty, see § 151.999

#### **§ 151.081 NONCONFORMING SIGNS.**

(A) A sign in existence on or before the original effective date of this subchapter which does not conform with the provisions of this subchapter relative to size, location, construction or manner of display, but which did conform with the sign regulations in effect at the time the sign was erected, shall be deemed to be a legal nonconforming sign. All other signs which do not conform with said provisions of this subchapter shall be deemed to be illegal nonconforming signs.

(B) An illegal nonconforming sign shall be removed, changed or altered to conform with the provisions of this subchapter within six months.

(1989 Code, § 10-44) (Ord. 105, passed 8-13-1981) Penalty, see § 151.999

#### **§ 151.082 PUBLICLY OWNED PROPERTY EXCEPTION.**

(A) The provision of this subchapter regulating signs shall not apply to lands and buildings which are publicly owned.

(B) The exclusion does not apply to lands, buildings or occupancies purchased or constructed for public housing under federal, state or local grants to be available for use of occupancy as personal housing or dwelling.

(1989 Code, § 10-47) (Ord. 190-94, passed 4-14-1994)

## **ZONING DISTRICTS**

### **§ 151.095 TYPES OF DISTRICTS.**

For purposes of accomplishing the objectives of the zoning ordinance, the incorporated areas of the town are organized into the following districts:

(A) B - Business Commercial; and

(B) R - Residential.

(1989 Code, § 10-50) (Ord. 168-90, passed 9-13-1990)

### **§ 151.096 MAPS.**

The location and boundaries of the districts established by this chapter are set forth on the new map entitled *Roseland, Indiana, Zoning District Map*, which is incorporated into and made a part of this chapter. The new map, together with everything shown thereon and all amendments thereto, shall be as much a part of this chapter as though fully set forth and described herein. The new map shall be maintained in the office of the Area Plan Commission. Copies of the new map, as adopted, shall be filed with the office of the Town Clerk-Treasurer. Certified copies of the new map, as adopted and further amended, shall be filed with the County Building Commissioner in his or her capacity as the Building Commissioner for the town. Copies of the new map shall be open to public inspection at all times during normal business hours.

(1989 Code, § 10-51) (Ord. 175-72, passed 3-12-1992)

### **§ 151.097 EXEMPTIONS.**

(A) The following uses are exempted by this chapter and permitted in commercial districts:

- (1) Poles;
- (2) Wires;
- (3) Cables;
- (4) Conduits;
- (5) Vaults;
- (6) Substations;
- (7) Laterals;
- (8) Pipes;
- (9) Mains;

(10) Valves; or

(11) Any other similar installation for telephone, electric, gas, water and sewer systems; provided that installations shall conform with rules and regulations of federal, state, county and other authorities having jurisdiction.

(B) The following uses are exempted by the chapter and permitted in residential districts:

(1) Poles;

(2) Wires;

(3) Cables;

(4) Conduits;

(5) Vaults;

(6) Substations;

(7) Laterals;

(8) Pipes;

(9) Mains;

(10) Valves; or

(11) Any other similar installation for telephone, electric, gas, water, and sewer systems; provided that installations are for the purpose of furnishing telephone, electric, gas, water, and sewer systems to residents of the town, in connection with residential use, and shall conform with rules and regulations of federal, state, country, and other authorities having jurisdiction.  
(1989 Code, § 10-52) (Ord. 40A, passed 7-11-1966; Ord. 213-96, passed 2-13-1997)

## ***ZONING DISTRICT GENERAL REQUIREMENTS***

### **§ 151.110 PERMITTED USES.**

(A) Permitted uses of land or buildings, as hereinafter listed, in each zoning district shall be permitted in the districts indicated under the conditions specified.

(B) No land or buildings shall be devoted to any use other than a use permitted hereinafter in the zoning district in which such land or buildings shall be located, with the exception of the following:

(1) *Uses lawfully established on the effective date of this chapter.* Uses established on the effective date of this chapter and rendered nonconforming by the provisions thereof shall be subject to the regulations of ● 151.040 through 151.048; and

(2) *Special uses.* Special uses allowed in accordance with procedures set forth herein. (1989 Code, § 10-56) (Ord. 40A, passed 7-11-1966)

### **§ 151.111 SPECIAL USES.**

(A) Special uses, as hereinafter listed in each zoning district, may be allowed only in the zoning district indicated, subject to the issuance of special use permits in accordance with the procedures set forth herein, with the exception of the following.

(B) Where a use exists on the original effective date of this chapter and it is classified by this chapter as an allowable special use in the zoning district where it is located, it shall be considered to be a lawful special use. Additions or alterations to existing buildings or land improvements for expansion of a lawful special use may be made without a special use permit, within the area of the lot included in the ownership existing at the time of adoption of this chapter, provided there is compliance with all other applicable requirements set forth in this chapter.

(1989 Code, § 10-57) (Ord. 40A, passed 7-11-1966)

### **§ 151.112 CONTROLLED AREAS.**

In order to prevent the development of a blighted area, no building or premise may be erected, moved, structurally altered or enlarged, for any controlled use as defined herein, if such building or premise is located within 1,000 feet of any two other establishments, which, if located within the boundaries of the town, fall within said definition of controlled uses or which, though located outside the corporate boundaries of the town, would fall within such definition if located within the town.

(1989 Code, § 10-58) (Ord. 80, passed 6-9-1977) Penalty, see § 151.999

### **§ 151.113 ADULT BUSINESS USES.**

No building or premise may be used, and no building or premise may be erected, moved or structurally altered or enlarged for any adult business uses as defined herein within 500 feet of any of the following zoning districts in the unincorporated area of St. Joseph County:

- (A) A - Agriculture;
- (B) B - Business;
- (C) U - University District;
- (D) R - Single-Family Residence;
- (E) PUD - Planned Unit Development
- (F) R-2 - Multi-Family; or

(G) The following districts in the town: R - Residential District.  
(1989 Code, § 10-59) (Ord. 03-2009, passed - -; Ord. 80, passed 6-9-1977)



## ***BUSINESS COMMERCIAL DISTRICT***

### **§ 151.125 GENERAL REQUIREMENTS.**

(A) All business establishments shall be in the general nature of retail or service establishments dealing directly with customers.

(B) All goods produced on the premises shall be sold at retail on the premises where produced. (1989 Code, § 10-61) (Ord. 40A, passed 7-11-1966)

### **§ 151.126 PERMITTED USES.**

(A) The following are permitted used within the Business Commercial District:

- (1) Antique shops;
- (2) Bakeries;
- (3) Banks and financial institutions;
- (4) Barber shops;
- (5) Beauty parlors;
- (6) Book and stationery stores;
- (7) Business machine sales and service;
- (8) Camera and photographic supply stores;
- (9) Candy and ice cream stores;
- (10) Carpet and rug stores;
- (11) China and glassware stores;
- (12) Clothes pressing establishments;
- (13) Clubs and lodges (non-profit);
- (14) Custom dressmaking;
- (15) Department stores;
- (16) Drug stores;
- (17) Dry cleaning establishments of laundries with five or less employees;

- (18) Dry goods stores;
- (19) Electrical and household appliance stores, including radio and television sales;
- (20) Florist shops;
- (21) Food stores, grocery stores, meat markets, fish markets, bakeries and delicatessens;
- (22) Furniture stores;
- (23) Garden supply and seed stores;
- (24) Gift shops;
- (25) Hardware stores;
- (26) Interior decorating stores;
- (27) Jewelry stores;
- (28) Launderettes, self-service;
- (29) Leather goods and leather stores;
- (30) Liquor stores, package;
- (31) Machinery sales;
- (32) Locksmith shops;
- (33) Medical and dental clinics;
- (34) Millinery shops;
- (35) Musical instrument sales and repair;
- (36) Office supply stores;
- (37) Offices, business and professional;
- (38) Optician sales, retail;
- (39) Paint and wallpaper stores;
- (40) Phonograph record and sheet music stores;
- (41) Photograph studios;
- (42) Post offices;



- (43) Radio and television sales and service repair shops;
- (44) Religious institutions;
- (46) Restaurants;
- (46) Schools, music, dance or business;
- (47) Sewing machine sales and service;
- (48) Shoe stores;
- (49) Sporting goods stores;
- (50) Tailor shops;
- (51) Taverns;
- (52) Telephone booths, outdoor;
- (53) Tobacco shops;
- (54) Toy shops;
- (55) Variety stores;
- (56) Wearing apparel shops;
- (57) Accessory uses, incidental to, and on the same lot as principal use;
- (58) Lands, buildings and occupancies which are publicly owned and which involve public health and safety; and
- (59) Accessory off-street parking facilities required as accessory to uses listed above which shall be used solely for the parking of passenger automobiles of patrons, occupants and employees.

(B) Such uses as may be uncertain as to their classification as included in this section shall be considered a special use and included in § 151.127.  
(1989 Code, § 10-62) (Ord. 40A, passed 7-11-1966)

### **§ 151.127 SPECIAL USES.**

The following allowable special uses shall be permitted only in accordance with procedures, regulations and standards set forth in this chapter, and, when applicable, more restrictive federal, state or county regulations and standards, and additional standards that may be designated by the Board of Zoning Appeals:

(A) Amusement establishments - bowling alleys, pool halls, dance halls, swimming pools, skating rinks, archery ranges, shooting galleries and similar uses;

- (B) Animal hospital;
  - (C) Automobile laundries;
  - (D) Automobile service stations;
  - (E) Bus passenger stations and terminals;
  - (F) Drive-in establishments;
  - (G) Garages, for storage, repair and servicing of motor vehicles of not over one and one-half tons capacity, including body repair, painting and engine rebuilding;
  - (H) Hotels and motels;
  - (I) Motor vehicle sales;
  - (J) Parking lots, open and other than accessory, for storage of motor vehicles of not over one and one-half tons capacity;
  - (K) Pet shops;
  - (L) Poultry, live-slaughtering and retail sale on premises;
  - (M) Painting shops;
  - (N) Trailer sales and rental, for use with private passenger motor vehicles;
  - (O) Undertaking establishments;
  - (P) Tool and die shops provided that all operations including accessory storage are conducted in enclosed buildings in such a manner as not to be visible from a street and/or surrounding properties;
  - (Q) Contractors or construction offices and shops, provided there is no outside storage;
  - (R) Mini storage units, provided that no structure be higher than 20 feet nor wider than 30 feet;
  - (S) Residential, to include a single-family dwelling when located in the same building as permitted or special use in the Business Commercial District or multi-family dwellings; and
  - (T) Wireless communication facility.
- (1989 Code, § 10-63) (Ord. 03-2009, passed - -; Ord. 40A, passed 7-11-1966; Ord. II, passed 1-24-1967; Ord. 167-90, passed 10-11-1990; Ord. 213-96, passed 2-13-1997)

### **§ 151.128 LOT AREA.**

Not less than 2,500 square feet of lot area for each business establishment.  
(1989 Code, § 10-64) (Ord. 40A, passed 7-11-1966)

### **§ 151.129 YARDS.**

(A) *Front yards.* Not less than 40 feet in depth.

(B) *Side yards.*

(1) If a side yard is provided along an interior lot line, it shall be not less than five feet in width.

(2) On a corner lot, a side yard adjoining a street shall be not less than 40 feet in width, except if a corner lot of record, recorded prior to the effective date of this chapter, has insufficient width to provide such a yard of 40 feet in width and still maintain a buildable width of 30 feet, then the side yard adjoining a street may be reduced by the distance necessary to maintain such buildable width.

(C) *Rear yards.* Not less than 20 feet in depth.  
(1989 Code, § 10-65) (Ord. 40A, passed 7-11-1966)

### **§ 151.130 SIGNS.**

Business signs and advertising devices are permitted subject to the following conditions.

(A) No business sign or advertising device shall be erected or relocated within 25 feet of any street or highway.

(B) No advertising device shall be permitted within 100 feet of any residential district boundary line.

(C) The gross area in square feet of all signs on a lot shall not exceed six times the lineal feet of frontage of such lot. However, the gross area of all advertising devices shall not exceed three times the lineal feet of frontage of such lot or one standard sign structure of maximum size, whichever is lesser.

(D) No sign shall project more than 18 inches from the face of the wall of any building or structure.

(E) No sign shall project higher than 30 feet above curb level, except as may be provided by special use.

(F) A business sign may be located on a building roof provided it is not higher than six feet above building height.

(G) Any sign located within three feet of a driveway, parking area or within 50 feet of the intersection of two or more streets, shall have the lowest elevation of at least 12 feet above curb level.

(H) Any conflict between this section and the provisions set forth in §§ 151.060 through 151.062 and 151.075 through 151.082 shall be in favor of the provisions of §§ 151.060 through 151.062 and 151.075 through 151.082.  
(1989 Code, § 10-66) Penalty, see § 151.999

## ***RESIDENTIAL DISTRICT***

### **§ 151.145 PERMITTED USES.**

(A) *Residential uses.* Single-family detached dwellings of the following types:

(1) Site constructed home;

(2) Modular home;

(3) Manufactured home, type A, provided that the following information is certified to the Building Commissioner upon application for a building permit:

(a) Manufacturer;

(b) Model name/serial number;

(c) Year of manufacture;

(d) Exterior dimensions;

(e) Roofing materials; and

(f) Siding materials and treatment.

(B) Uses customarily incidental to single-family residential dwellings such as:

(1) Garages, carports and open off-street parking;

(2) Playhouses, playground equipment and apparatus;

(3) Greenhouses and conservatories, not larger than 400 square feet;

(4) Tool houses, sheds and similar buildings, the total square footage of which shall not exceed the total square footage of the principal residence; and

(5) Swimming pools and tennis courts.

(C) Home use as defined in • 151.002  
(1989 Code, § 10-70) (Ord. III, passed 7-8-1982; Ord. 165-90, passed 10-11-1990; Ord. 218-97, passed 6-17-1998)

**§ 151.146 SPECIAL USES.**

- (A) Multi-family dwellings;
  - (B) Libraries;
  - (C) Non-boarding nursery, public, private or parochial, elementary, middle and high schools; and
  - (D) Public parks, playgrounds and recreation areas.
- (1989 Code, § 10-71) (Ord. 165-90, passed 10-11-1990)

**§ 151.147 LOT AREA.**

- (A) *Single-family detached dwelling.* Not less than 15,000 square feet, except that the lot area may be reduced to 9,000 square feet when and if the town is completely served by a public or community sewerage and water supply system.
  - (B) *All other uses.* Not less than one acre, except as otherwise regulated herein for a specific permitted or special use.
- (1989 Code, § 10-72) (Ord. 40A, passed 7-11-1966)

**§ 151.148 LOT WIDTH.**

<i>Lot</i>	<i>Lot Width</i>
Lots 15,000 square feet or more	100 feet or more
Lots 12,000 square feet	75 feet or more
Lots 9,000 square feet	60 feet or more

(1989 Code, § 10-73) (Ord. 40A, passed 7-11-1966)

**§ 151.149 BUILDING HEIGHT.**

Not more than two and one-half stories, or 40 feet, whichever is lower, for single- and two-family dwellings.

(1989 Code, § 10-74) (Ord. 40A, passed 7-11-1966)

**§ 151.150 GROUND FLOOR AREA PER SINGLE-FAMILY DETACHED DWELLING.**

- (A) One story dwelling, not less than 850 square feet.
  - (B) Dwelling having more than one story, not less than 720 square feet.
- (1989 Code, § 10-75) (Ord. 40A, passed 7-11-1966)

**§ 151.151 YARDS.**

(A) *Front yard.* Not less than 35 feet.

(B) *Side yards.* Two side yards having a combined width of 20 feet, with a side yard less than eight feet in width. Accessory buildings, structures or uses may be located within the required side yard provided that such building, structure or use be no closer than four feet from the side property line except for corner lots or reversed corner lots. No building, structure or use on a corner lot or reversed corner lot shall be closer than 35 feet from the side property line adjoining a street.

(C) *Rear yards.* Not less than 40 feet. Accessory buildings, structures or uses may be located within the required rear yard provided that such use be no closer than eight feet from the rear property line except on a through lot, which by definition has two front yards.  
(1989 Code, • 10-76) (Ord. 40A, passed 7-11-1966; Ord. 166-90, passed 10-11-1990)

### **§ 151.151 SIGNS.**

(A) There shall be not more than one nameplate or identification sign and it shall not exceed one square foot in area, for each dwelling unit, indicating the name or address of the occupant or a permitted home occupation. On a corner lot, two such nameplates for each dwelling unit, one facing each street, shall be permitted.

(B) (1) “For Sale” and “To Rent” signs shall be permitted but not more than one sign per lot, except that on a corner lot two signs, one facing each street, shall be permitted.

(2) No sign shall exceed 12 square feet in area nor be closer than eight feet to any other lot.

(C) Any conflict between this section and the provisions set for in §§ 151.060 through 151.062 and 151.075 through 151.082 should be resolved in favor of the provisions of §§ 151.060 through 151.062 and 151.075 through 151.082.  
(1989 Code, § 10-77) (Ord. 40A, passed 7-11-1966)

### **§ 151.153 INSTALLATION, SIDING AND ROOFING STANDARDS FOR MANUFACTURING HOMES, TYPE A.**

(A) *Installation standards.*

(1) *Permanent perimeter enclosure.*

(a) A manufactured home, type A, must be set onto an excavated area with crawl space walls or basement walls constructed in accordance with the terms of the One- and Two-Family Dwelling Code.

(b) The space between the floor joists of the home and the excavated under-floor grade shall be completely enclosed with the permanent perimeter enclosure, except for required openings.

(2) *Support system (foundation).* All load-bearing foundations shall be installed in

conformance with the regulations in the One- and Two-Family Dwelling Code and with the manufacturer's installation specifications.

(B) *Siding standards.* The following siding materials are approved for usage on manufactured homes, type A:

- (1) Residential horizontal aluminum lap siding;
- (2) Residential horizontal vinyl siding;
- (3) Cedar or other wood siding;
- (4) Wood grain, weather resistant, press board siding;
- (5) Stucco siding; and
- (6) Brick or stone siding.

(C) *Roofing standards.* The following roofing materials are approved for usage on manufactured homes, type A:

- (1) Asbestos shingles on a roof pitched according to the design specifications of the shingles;
- (2) Fiberglass shingles on a roof pitched according to the design specifications of the shingles;
- (3) Shake shingles on a roof pitched according to the design specifications of the shingles;
- (4) Asphalt shingles on a roof pitched according to the design specifications of the shingles;
- (5) Slate materials on a roof pitched according to the design specifications of the materials; and
- (6) Tile materials on a roof pitched according to the design specifications of the materials.

(1989 Code, § 10-78) (Ord. III, passed 7-8-1982)



## *EXCEPTIONS TO TRAILER REGULATIONS*

### **§ 151.165 PROCEDURE FOR TRAILER EXCEPTIONS.**

(A) Any person desiring to be heard on the matter shall bring the issue before the Town Council. A petition to the Town Council on such matters shall follow the following procedures before the Town Council shall give the matter any consideration.

(B) The person aggrieved shall submit to the Town Council:

- (1) A plot plan showing neighboring properties within 300 feet of the property;
  - (2) A list of names and addresses of all property owners within 300 feet of the subject property;
  - (3) A statement of the proposed use of the subject property and the reasons for the request for exception from the Trailer Ordinance (see § 151.008);
  - (4) Self-addressed stamped envelopes for the residents within 300 feet of the subject property;
  - (5) A basic site plan showing the location of the trailer on the subject property; and
  - (6) A check for \$20 for the administrative costs of handling the petition for exception.
- (1989 Code, § 10-82) (Res. 6, passed 10-14-1982)

## ***OFF-STREET PARKING REGULATIONS***

### **§ 151.180 INTENT.**

These off-street parking regulations are intended to provide for the provision of off-street parking areas which are adequate to support the needs of proposed uses and future uses of a site while at the same time assuring that the design and construction of such off-street parking areas meet minimum design standards necessary to promote efficient circulation and prevent undue traffic congestion.

(Ord. 267-06, passed 7-13-2006)

### **§ 151.181 APPLICABILITY.**

All new development, additions to buildings or structures or conversions of use for which an improvement location permit is required by this subchapter shall provide required off-street parking in accordance with the regulations of this subchapter. Such off-street parking areas may be provided in either a surface parking area or a parking garage. If off-street parking areas are provided in a parking garage, such parking garage shall be located in compliance with all other general development standards of the applicable district.

(Ord. 267-06, passed 7-13-2006)

### **§ 151.182 EXISTING PARKING AREAS.**

Existing off-street parking areas shall not be reduced below the minimum requirement for such use as required by this subchapter. Any off-street parking areas existing prior to the effective date of this subchapter which were already below the standards established by this subchapter shall not be further reduced. Any off-street parking areas existing prior to the effective date of this subchapter which were already below the standards established by this subchapter shall be brought in compliance within five years of the adoption of this subchapter.

(Ord. 267-06, passed 7-13-2006) Penalty, see § 151.999

### **§ 151.183 LOCATION OF PARKING AREAS.**

Off-street parking shall be located:

- (A) On the same lot as the building, structure or use served by the off-street parking area;
- (B) Within the same integrated center, business park or industrial park as the building, structure or use served by the off-street parking area; or
- (C) Within 500 feet, of the building, structure or use served by the off-street parking area, provided that such off-site location for the off-street parking area is approved by the Board of Zoning Appeals as a conditional use where:
  - (1) Such off-street parking area shall be located within a district which permits the use for which the off-street parking is provided; and

(2) A written agreement, properly drawn and executed by the parties concerned and approved as to form by the Town Attorney, assuring the availability of the off-street parking area is filed with the Board of Zoning Appeals as part of the request for approval of the conditional use. (Ord. 267-06, passed 7-13-2006)

**§ 151.184 DESIGN AND CONSTRUCTION OF OFF-STREET PARKING AREAS.**

The design and construction of all required off-street parking areas shall be in compliance with the regulations contained in this subchapter.

(A) *Design of parking areas.*

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

(a) *Option 1.* In the *Architectural Graphic Standards*, Tenth Edition, or most current edition, for a level of service “A” or “B”; or

(b) *Option 2.* In the table, Parking Lot Design, below.

<i>Parking Lot Design</i>			
<i>Angle of Parking Space (in Degrees)</i>	<i>Minimum Width of Parking Space</i>	<i>Minimum Depth of Parking Space</i>	<i>Minimum Width of Maneuvering Aisle</i>
61-90	9 ft. 9 in.	20 ft. 0 in.	24 ft. 0 in.
46-60	9 ft. 0 in.	19 ft. 0 in.	18 ft. 0 in. one way)
45	8 ft. 0 in.	22 ft. 0 in.	12 ft. 0 in. (one way)
Parallel	8 ft. 0 in.	22 ft. 0 in.	12 ft. 0 in. (one way)

(2) *Definition of off-street parking spaces.*

(a) Except for agricultural uses, individual single-family dwellings or two-family dwellings, all **OFF-STREET PARKING SPACES** shall be:

1. Identified by painted lines (minimum four inches in width), raised curbs or other means to indicate individual spaces; and

2. Provided with a raised curb, wheel stops or other devices to ensure that motor vehicles do not encroach beyond the off-street parking area or into a required yard.

(b) For individual single-family dwellings or two-family dwellings, no off-street parking space for an individual single-family dwelling or two-family dwelling shall be permitted on the setback between the street and the front or sides of the single-family dwelling or two-family dwelling.

(B) *Surface of off-street parking areas.* Except for agricultural uses, all required off-street

parking areas and any driveway, interior access driveway or interior access drive to and from such off-street parking areas shall be hard surfaced with asphalt, concrete or other material to provide a durable, dust-free surface.

(Ord. 267-06, passed 7-13-2006)

### **§ 151.185 MINIMUM NUMBER OF REQUIRED OFF-STREET PARKING SPACES.**

(A) Off-street parking for all uses shall be provide in accordance with the minimum requirements set forth in tables in the § 151.186, Minimum ADA Parking Spaces and § 151.187 Required Off-Street Parking.

(B) When the computation of required off-street parking spaces results in a fraction of one-half or greater, the number of required off-street parking spaces shall be rounded up to the next whole number.

(1) *Increase in intensity of use.* Additional off-street parking spaces shall be required whenever:

(a) A change of use of a building, structure or lot; or

(b) An addition to any unit of measurement specified herein (i.e., dwelling units, gross floor area, seating capacity, number of employees and the like), results in an increase in the minimum number of required off-street parking spaces to an extent of 15% or more than the number of off-street parking spaces existing on the effective date of this subchapter on the single use site, integrated center or industrial park, as the case may be, whether such total increase occurs at one time or in successive stages.

(2) *Units of measurements.*

(a) *Employees.* The number of employees shall be compiled based upon the maximum number of persons employed on the premises at any one time on an average day or average night, whichever is greater.

(b) *Gross floor area.* Gross floor area shall be determined per the definition of gross floor area in § 151.002.

(c) *Seating capacity/building capacity.* Seating or building capacity shall be based upon the determination of the County Fire Marshal regarding maximum building capacity.

(Ord. 267-06, passed 7-13-2006)

### **§ 151.186 REQUIRED PARKING FOR THE DISABLED.**

Every off-street parking area and parking garage available to the public shall have parking spaces reserved for the use of physically handicapped persons as required by *ADA Accessibility Guidelines for Buildings and Facilities, Chapter 4.1.2 (5)(a)*, published in the Federal Register, Volume 56, No. 144, dated July 26, 1991 being 28 C.F.R. Part 36, Appendix A, 4.12(5)(a); provided, however, facilities which provide medical care and other services to person with mobility impairments shall provide ADA parking spaces as follows:

(A) *Outpatient units and facilities.* Ten percent of the total number of off-street parking spaces; and

(B) *Units and facilities that specialize in treatment services for persons with mobility impairment.* Twenty percent of the total number of off-street parking spaces.

<i>Minimum ADA Parking Spaces</i>	
<i>Total Parking Spaces Required</i>	<i>Minimum Number of Reserved Spaces</i>
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2% of the total number of off-street parking spaces
1,001 and over	20, plus 1 for each 100 off-street parking spaces over 1,000

(Ord. 267-06, passed 7-13-2006)

**§ 151.187 REQUIRED OFF-STREET PARKING.**

All uses shall provide a minimum number of off-street parking spaces as indicated below.

<i>Use</i>	<i>Required Minimum Off-Street Parking Spaces</i>
Ambulance and armored car service	1 parking space per vehicle plus 1 parking space per on-duty employee
Assembly facilities without fixed seats, including dance halls, martial arts schools, aerobic and exercise centers and similar studios or centers	1 parking space per every 25 sq. ft. of floor area in public use
Automobile, motorcycle, truck, bus, RV and boat sales	1 parking space per 300 sq. ft. of sales floor area in excess of 1,000 sq. ft. plus 1 parking space per 2,000 sq. ft. of open area
Bar, tavern, nightclub, cabaret and other establishments for the sale of beer or intoxicating liquor for consumption on the premises	1 parking space per every 3 persons based upon the maximum number of person that can be accommodated at the same time in accordance with design capacity
Barber shop/beauty shop/hair salon/manicure shop/tanning salon	3 parking spaces per each customer seat or service station

<i>Use</i>	<i>Required Minimum Off-Street Parking Spaces</i>
Boarding houses	1 parking space per 2 guest rooms plus 1 parking space for owner or manager
Bowling alleys	5 parking spaces per alley; if, in addition, there are other uses or accessory uses located within or operate in conjunction with the bowling alley, such as restaurants, bars, taverns, nightclubs and the like, additional parking spaces, calculated based upon the parking requirements for that specific use, shall be provided (calculation shall be based upon the total sq. ft. of gross leasable floor area for such uses located within or operated in conjunction with the bowling alley)
Car washes	Stacking spaces per wash bay, as required for a drive-through facility, plus 3.5 parking spaces per 1,000 sq. ft. of gross floor area devoted to office or retail sales
Child care centers	1 parking space per employee plus 3 additional parking spaces
Financial institutions/banks	1 parking space per 200 sq. ft. of gross floor area, plus parking spaces as required for each walk-up, drive-through or freestanding bank machine
Financial institutions/banks-freestanding bank machines, walk-up or drive-through	1 parking space for each walk-up, drive-through or freestanding bank machine, plus stacking spaces as required for a drive-through facility for any drive-through or freestanding bank machine accessible from an automobile
Funeral homes and mortuaries	1 parking space per every 50 sq. ft. of gross floor area in service rooms
Gasoline stations and public garages	1 parking space per each employee, plus 2 parking spaces for each service bay
Grocery store	5 parking spaces per 1,000 sq. ft. of gross floor area
Gun clubs, skeet, target or archery ranges	1 parking space per every 2 employees, plus 1 parking space per shooting position
Hardware/paint/home improvement store	5 parking spaces per 1,000 sq. ft. of gross floor area
Hotels and motels	1 parking space per guest room, plus 2 parking spaces at office or registration area; if, in addition to guest rooms, there are other uses or accessory uses located within or operated in conjunction with the hotel or motel, such as ballrooms, meeting rooms, dining areas, retail stores, auditoriums, bars, restaurants, taverns, nightclubs and the like, additional parking spaces, calculated based upon the parking requirements for that specific use, shall be provide (calculation shall be based upon the total sq. ft. of gross leasable floor area for such uses located within or operate in conjunction with the hotel or motel)
Laundromats	1 parking space per every 2 washing machines, plus 1 parking space per every 2 employees
Medical and dental clinics	5 parking spaces per each doctor

<i>Use</i>	<i>Required Minimum Off-Street Parking Spaces</i>
Off-track pari-mutual wagering facility	1 parking space per each employee, plus 1 parking space per every 3 person based upon the maximum number of person that can be accommodated at the same time in accordance with the design capacity
Offices and office buildings	3.5 parking spaces per 1,000 sq. ft. of gross floor area
Publishing establishments, newspaper or printing shops	2 parking spaces per 1,000 sq. ft. of gross floor area, plus 3.5 parking spaces per 1,000 sq. ft. devoted to office or related retail activities
Residential: multi-family, including apartment houses	2 parking spaces per dwelling unit
Residential: single-family	1 parking space per dwelling unit
Residential: two-family	2 parking spaces per dwelling unit
Restaurants: family restaurant, family restaurant with lounge, fast food restaurant	1 parking space per every 3 persons based upon the maximum number of persons that can be accommodated at the same time in accordance with design capacity (including outdoor seating areas)(minimum of 5 parking spaces required)
Restaurants: drive-in restaurant	1 parking space per customer service unit, plus 10 parking spaces per 1,000 sq. ft. of gross floor area (minimum of 4 additional parking spaces required)
Restaurants: drive-through only (no seating)	<p>&lt; 100,000 sq. ft. - 3.5 parking spaces per 1,000 sq. ft. of gross floor area, provided, however, that in no case shall any individual use provide less than a total of 5 parking spaces</p> <p>100,000 sq. ft. and over - 2.50 parking spaces per 1,000 sq. ft. of gross floor area</p>
Retail-integrated centers	<p>&lt;400,000 sq. ft. - If the total gross leasable floor area of an integrated center is less than 400,000 sq. ft., 4 parking spaces per 1,000 sq. ft. of gross leasable floor area shall be required</p> <p>400,000 - 600,00 sq. ft. - If the total gross leasable floor area of an integrated center is greater than 400,000 sq. ft., but less than 600,000 sq. ft., 4.5 parking spaces per 1,000 sq. ft. of gross leasable floor area shall be required</p> <p>600,000 sq. ft. - If the total gross leasable floor area of an integrated center is greater than 600,000 sq. ft., 5 parking spaces per 1,000 sq. ft. of gross leasable floor area shall be required</p> <p>Provided, however:</p> <p>(1) in no case shall any integrated center provide less than 5 spaces: and</p> <p>(2) the following individual uses: grocery store; hardware/paint/home improvement store; theaters; bowling alley; bar; tavern; nightclub; cabarets; or other establishments for the sale of beer or intoxicating liquor for consumption on the premises shall provide parking spaces as required for the individual use by this section</p>

<i>Use</i>	<i>Required Minimum Off-Street Parking Spaces</i>
	and such calculation shall be separate from the calculation of the gross leasable floor area calculation of the integrated center
Service or repair establishments	3.5 parking spaces per every 1,000 sq. ft. of gross floor area
Theaters, auditoriums, gymnasiums, stadiums, arenas, convention halls and places of assembly with fixed seats	1 parking space per every 5 seat, plus 1 parking space per every 2 employees
Veterinary hospitals, animal kennels and pounds	1 parking space per every 400 sq. ft. of gross floor area
Minimum parking required	Except for residential uses, in no case shall any individual, non-related and separately operated use provide less than 3 parking spaces
Uses not specified	For any use not specified above, specific requirements shall be determined by the Zoning Administrator and shall be based upon requirements for similar uses, expected demand and traffic generated by the proposed use, and other information from appropriate traffic engineering and planning criteria

(Ord. 267-06, passed 7-13-2006)

**§ 151.188 NONCONFORMING USES.**

(A) Any nonconforming use which existed prior to the enactment of this subchapter which does not involve improvement to property, land or structures shall end immediately.

(B) Any nonconforming use which existed prior to the enactment of this subchapter and which was not legal at the time of the enactment of this subchapter shall end immediately.

(C) Nothing in this subchapter is to be construed so as to authorize the continuance of a pre-existing nonconforming use if such pre-existing nonconforming use was not legal or legitimate at either the time it came into existence or any subsequent time.

(D) Any other prior nonconforming use that existed prior to the enactment of this subchapter shall end within five years of the date of the enactment of this subchapter.

(Ord. 267-06, passed 7-13-2006) Penalty, see § 151.999

**§ 151.189 PARKING OF ANY VEHICLES IN YARDS OR LAWNS.**

Parking of any vehicle in yards or lawns for more than 48 hours is prohibited.

(Ord. 267-06, passed 7-13-2006) Penalty, see § 151.999



**§ 151.190 LICENSURE OF VEHICLES.**

All vehicles, regardless of where they are parked, must be currently and properly licensed by the state or originating jurisdiction.

(Ord. 267-06, passed 7-13-2006) Penalty, see § 151.999

*FLOODPLAIN REGULATIONS***§ 151.205 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES.**

(A) *Statutory Authorization.* The Indiana Legislature has in IC 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Town Council of the Town of Roseland, Indiana does hereby adopt the following floodplain management regulations.

(B) *Findings of Fact.*

(1) The flood hazard areas of the Town of Roseland, Indiana are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages.

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

(1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging, and other development which may increase erosion or flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and,

(6) Make federal flood insurance available for structures and their contents in the Town of Roseland, Indiana by fulfilling the requirements of the National Flood Insurance Program.

(D) *Objectives.* The objectives of this ordinance are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains; and
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.

#### § 151.206 DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. In addition to the definitions contained in §151.002 Definitions, the following definitions shall apply to the Floodplain Regulations of this Chapter.

(A) **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:

Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

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).

Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

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.

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.

(B) **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.

(C) **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.

(D) **Appeal** means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

(E) **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.

(F) **Base Flood** means the flood having a one percent chance of being equaled or exceeded in any given year.

(G) **Base Flood Elevation (BFE)** means the elevation of the one-percent annual chance flood.

(H) **Basement** means that portion of a structure having its floor sub-grade (below ground level) on all sides.

(I) **Boundary River** means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

(J) **Boundary River Floodway** means the floodway of a boundary river.

(K) **Building** - see "**Structure**."

(L) **Community** means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

(M) **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.

(N) **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.

(O) **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.

(P) **Development** means any man-made change to improved or unimproved real estate including but not limited to:

(1) construction, reconstruction, or placement of a structure or any addition to a structure;

(2) installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;

(3) installing utilities, erection of walls and fences, construction of roads, or similar projects;

(4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;

(5) mining, dredging, filling, grading, excavation, or drilling operations;

(6) construction and/or reconstruction of bridges or culverts;

(7) storage of materials; or

(8) any other activity that might change the direction, height, or velocity of flood or surface waters.

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

(Q) **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).

(R) **Elevation Certificate** is a certified statement that verifies a structure's elevation information.

(S) **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.

(T) **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.

(U) **Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(V) **FEMA** means the Federal Emergency Management Agency.

(W) **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.

(X) **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.

(Y) **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.

(Z) **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.

(AA) **Flood Prone Area** means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See “**Flood**”)

(BB) **Flood Protection Grade (FPG)** is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (See “**Freeboard**”)

(CC) **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.

(DD) **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.

(EE) **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.

(FF) **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.

(GG) **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.

(HH) **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.

(II) **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.

(JJ) **Fringe** is those portions of the floodplain lying outside the floodway.

(KK) **Hardship** (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Area Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

(LL) **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.

(MM) **Historic structures** means any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

(NN) **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.

(OO) **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.

(PP) **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:

(1) **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.

(2) **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.

(3) **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.



(QQ) **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.

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

- (1) The top of the lowest level of the structure.
- (2) The top of the basement floor.
- (3) The top of the garage floor, if the garage is the lowest level of the structure.
- (4) The top of the first floor of a structure elevated on pilings or pillars.

(5) 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:

(a) 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;

(b) 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,

(c) such enclosed space shall be usable solely for the parking of vehicles and building access.

(SS) **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."

(TT) **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.

(UU) **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.

(VV) **Mitigation** means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

(WW) **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.

(XX) **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.

(YY) **New construction** means any structure for which the “start of construction” commenced after the effective date of the community’s first floodplain ordinance.

(ZZ) **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.

(AAA) **Non-boundary river floodway** means the floodway of any river or stream other than a boundary river.

(BBB) **North American Vertical Datum of 1988 (NAVD 88)** as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

(CCC) **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.

(DDD) **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**”.

(EEE) **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.

(FFF) **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.

(GGG) **Recreational vehicle** means a vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

(HHH) **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.

(III) **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 §151.207 (B) of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

(JJJ) **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.

(KKK) **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.

(LLL) **Special Flood Hazard Area (SFHA)** means those lands within the jurisdiction of the Town of Roseland, Indiana subject to inundation by the regulatory flood. The SFHAs of the Town of Roseland are generally identified as such on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map dated January 6, 2011 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO).

(MMM) **Start of construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include 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 a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(NNN) **Structure** means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

(OOO) **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.

(PPP) **Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "**start of construction**" of the improvement. This term includes structures that have incurred "**repetitive loss**" or "**substantial damage**" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "**historic structure**", provided that the alteration will not preclude the structures continued designation as a "**historic structure**".

(QQQ) **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.

(RRR) **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.

(SSS) **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.

(TTT) **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.

(UUU) **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.

(VVV) **Zone** means a geographical area shown on a FHBM or FIRM that reflects the severity or type of flooding in the area.

(WWW) **Zone A** (see definition for **A zone**).

(XXX) **Zone B, C, and X** means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C).

### § 151.207 GENERAL PROVISIONS.

(A) *Lands to Which This Ordinance Applies.* This ordinance shall apply to all SFHAs and known flood prone areas within the jurisdiction of the Town of Roseland, Indiana.

(B) *Basis for Establishing Regulatory Flood Data.* This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below:

(1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the Town of Roseland, Indiana shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of St. Joseph County, Indiana and Incorporated Areas dated January 6, 2011 and the corresponding Flood Insurance Rate Map dated January 6, 2011 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.

(2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the Town of Roseland, Indiana, delineated as an "**A Zone**" on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map dated January 6, 2011 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.

(3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

(4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

(C) *Establishment of Floodplain Development Permit.* A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

(D) *Compliance.* No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

(E) *Abrogation and Greater Restrictions.* This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(F) *Discrepancy between Mapped Floodplain and Actual Ground Elevations.*

(1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.

(2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.

(3) If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA.

(G) *Interpretation.* In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(H) *Warning and Disclaimer of Liability.* The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on

rare occasions. Therefore, this ordinance does not create any liability on the part of the Town of Roseland, Indiana, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

(I) *Penalties for Violation.* Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Ordinance of the Town of Roseland, Indiana. All violations shall be punishable by a fine (See §151.999 PENALTY).

(1) A separate offense shall be deemed to occur for each day the violation continues to exist.

(2) The Town of Roseland Zoning Administrator shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.

(3) Nothing herein shall prevent the Town of Roseland, Indiana from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

#### **§ 151.208 ADMINISTRATION.**

(A) *Designation of Administrator.* The Town Council of the Town of Roseland, Indiana hereby appoints the Zoning Administrator to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

(B) *Permit Procedures.* Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

- (1) Application Stage.
  - (a) A description of the proposed development;
  - (b) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams;
  - (c) A legal description of the property site;

(d) A site development plan showing existing and proposed development locations and existing and proposed land grades;

(e) Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD;

(f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed; and

(g) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See §151.208 (C) (2) (f) 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 NAVD 88 or NGVD elevation of the lowest floor, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. The Floodplain Administrator shall review the lowest floor elevation survey data submitted. The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project. Any work undertaken prior to submission of the elevation certification shall be at the applicant's risk.

(3) Finished Construction. Upon completion of construction, an elevation certification (FEMA Elevation Certificate Form 81-31 or any future updates) which depicts the "as-built" lowest floor elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, floodproofing certification (FEMA Floodproofing Certificate Form 81-65 or any future updates) is required to be submitted by the applicant to the Floodplain Administrator.

(C) *Duties and Responsibilities of the Floodplain Administrator.*

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

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

(a) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied;



- (b) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations;
- (c) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to §151.209 (E) and §151.209 (G) (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit or floodplain analysis/regulatory assessment);
- (d) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit
- (e) Maintain and track permit records involving additions and improvements to residences located in the floodway;
- (f) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA;
- (g) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance;
- (h) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community;
- (i) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- (j) Review certified plans and specifications for compliance;
- (k) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with §151.208 (B)
- (l) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed, in accordance with §151.208 (B);
- (m) Stop Work Orders
  - 1. 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.

2. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(n) Revocation of Permits

1. 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.

2. 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.

**§ 151.209 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;

(10) Whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill or structure below the BFE shall be compensated for and balanced by an equivalent volume of excavation taken below the BFE. The excavation volume shall be at least equal to the volume of storage lost (replacement ratio of 1 to 1) due to the fill or structure.

(a) The excavation shall take place in the floodplain and in the same property in which the authorized fill or structure is located;

(b) Under certain circumstances, the excavation may be allowed to take place outside of but adjacent to the floodplain provided that the excavated volume will be below the regulatory flood elevation, will be in the same property in which the authorized fill or structure is located, will be accessible to the regulatory flood water, will not be subject to ponding when not inundated by flood water, and that it shall not be refilled;

(c) The excavation shall provide for true storage of floodwater but shall not be subject to ponding when not inundated by flood water;

(d) The fill or structure shall not obstruct a drainage way leading to the floodplain;

(e) The grading around the excavation shall be such that the excavated area is accessible to the regulatory flood water;

(f) The fill or structure shall be of a material deemed stable enough to remain firm and in place during periods of flooding and shall include provisions to protect adjacent property owners against any increased runoff or drainage resulting from its placement; and,

(g) Plans depicting the areas to be excavated and filled shall be submitted prior to the actual start of construction or any site work; once site work is complete, but before the actual start of construction, the applicant shall provide to the Floodplain Administrator a certified survey of the excavation and fill sites demonstrating the fill and excavation comply with this article.

(B) *Specific Standards.*

In all SFHAs, the following provisions are required:

(1) In addition to the requirements of §151.209 (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 market value of the structure (excluding the value of the land) before damage 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; and

(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 §151.209 (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 §151.209 (B) (4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

(a) A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities

are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the floodplain administrator as set forth in §151.208 (C) (2) (1).

(b) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(4) Elevated Structures.

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

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

1. Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).

2. 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.

3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

4. 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).

5. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

6. The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

7. Property owners shall be required to execute and record with the structure's deed a non-conversion agreement declaring that the area below the lowest floor (where the interior height of the enclosure exceeds 6 feet) shall not be improved, finished or otherwise converted; the community will have the right to inspect the enclosed area. The non-conversion agreement shall be recorded in the office of the St. Joseph County Recorder.

(5) Structures Constructed on Fill. A residential or nonresidential structure may be 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.

(f) Fill shall be composed of clean granular or earthen material.

(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:

1. 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.

2. 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 §151.209 (B) (4).

3. 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:

1. 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.

2. 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 §151.209 (B) (4).

3. 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:

1. be on site for less than 180 days;

2. 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

3. 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 §151.209 (B) (4).

(8) Above Ground Gas or Liquid Storage Tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.

(C) Standards for Subdivision Proposals.

(1) All subdivision 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 subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards;

(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; and

(6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).

(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.

(E) Standards for Identified Floodways.

(1) Located within SFHAs, established in §151.207 (B) of this ordinance, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements



to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of non-substantial additions/ improvements to residences in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources).

(2) No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in §151.209 (E) of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

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

(4) For all projects involving channel modifications or fill (including levees) the Town of Roseland, Indiana shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

(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 §151.209 (E) 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.

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

(b) No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the 100 year flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

(c) Once the Floodplain Administrator has received the proper permit for construction in a floodway (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in §151.209 of this ordinance have been met.

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

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

(b) Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in §151.209 of this ordinance have been met.

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

(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 general standards as required per §151.209.

#### **§ 151.210 VARIANCE PROCEDURES.**

(A) *Designation of Variance and Appeals Board.* The St. Joseph County Area Board of Zoning Appeals (ABZA) shall hear and decide appeals and requests for variances from requirements of this ordinance.

(B) *Duties of Variance and Appeals Board.* The board (ABZA) shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board (ABZA) may appeal such decision to the St. Joseph County Circuit or Superior Court.

(C) *Variance Procedures.* In passing upon such applications, the board (ABZA) shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

- (1) The danger of life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The importance of the services provided by the proposed facility to the community;
- (4) The necessity of the facility to a waterfront location, where applicable;
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (6) The compatibility of the proposed use with existing and anticipated development;
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and,
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(D) *Conditions for Variances.*

- (1) Variances shall only be issued when there is:
  - (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship; and,
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(2) No variance for a residential use within a floodway subject to §151.209 (E) or §151.209 (G) (1) of this ordinance may be granted.

(3) Any variance granted in a floodway subject to §151.209 (E) or §151.209 (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 §151.209 (B) of this ordinance, 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 §151.210 (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 §151.210 (E)).

(E) *Variance Notification.* Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the flood protection grade shall be given written notice over the signature of a community official that:

(1) The issuance of a variance to construct a structure below flood protection grade will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and;

(2) Such construction below the flood protection grade increases risks to life and property. A copy of the notice shall be recorded by the owner in the office of the St. Joseph County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

(F) *Historic Structure.* Variances may be issued for the repair or rehabilitation of “**historic structures**” upon a determination that the proposed repair or rehabilitation will not

preclude the structure's continued designation as an "**historic structure**" and the variance is the minimum to preserve the historic character and design of the structure.

(G) *Special Conditions.* Upon the consideration of the factors listed in §151.210, and the purposes of this ordinance, the St. Joseph County Area Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**§ 151.211 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.

**FEES AND APPROVALS**

**§ 151.250 REQUESTS FOR CONSTRUCTION OR REMODELING.**

It shall be unlawful for any person to construct a new structure or extend an existing structure in the town, unless said person or business:

- (A) Obtains approval from the Zoning Commissioner of the town;
  - (B) Obtains a valid building permit from the County Building Commissioner for any and all new construction and/or extension(s) of existing structures or any electrical or plumbing;
  - (C) Conforms to all applicable ordinances; and
  - (D) Has paid all applicable fees.
- (1989 Code, § 10-100) (Ord. 177-92/93, passed 3-11-1993) Penalty, see § 151.999

**§ 151.251 ZONING ADMINISTRATION FEES.**

Permit fees for zoning administration are as follows.

- (A) *All new building construction and building additions.*

Cost from \$1,000 to \$5,000	\$5
Cost from \$5,001 to \$50,000	\$20
Cost over \$50,001	\$50

- (B) *All remodeling, repairs, roofing and siding.*

Cost from \$1,000 to \$10,000	\$5
Cost over \$10,001	\$10

- (C) *All new electrical and electrical upgrades.*

Up to 600 amp	\$5
Over 601 amp	\$10

(D) *Installation of furnaces and air conditioning (central) in business and residential districts.*

Cost	\$5
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(E) *Installation of ventilating and exhaust systems.*

Up to 1,500 CFM	\$5
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(F) *Installation of commercial hoods.*

Up to 1,500 CFM capacity	\$10
Over 1,500 CFM capacity	\$20

(1989 Code, § 10-101) (Ord. 177-92/93, passed 3-11-1993; Ord. 238-02, passed 7-11-2002)

**§ 151.999 PENALTY.**

(A) *Generally.*

(1) Any person, firm or corporation who violates any provision of this chapter shall be guilty of an ordinance violation and, upon conviction, shall be fined not less than \$10 nor more than \$300, and each day that violation is permitted to continue shall constitute a separate offense.

(2) Any structure erected, raised or converted, or land or premises used in violation of any provision of this chapter is declared to be a common nuisance, and the owner of such structure, land or premises shall be liable for maintaining a common nuisance.

(3) The Board of Zoning Appeals or the Town Building Commission or the Town Council may institute a suit for injunction in the County Circuit or the County Superior Court to restrain any person, firm or corporation or a governmental unit from violating the provisions of this chapter.

(4) The Board of Zoning Appeals, the Town Building Commissioner or the Town Council may institute a suit for mandatory injunction in the Circuit Court directing an individual, firm or corporation, or a governmental unit to remove a structure erected in violation of the provisions of this chapter.

(1989 Code, § 10-28)

(B) *Signs.*

(1) *Generally.* Upon notice, violation of the provisions of §§ 151.075 through 151.082 relative to the size, location, construction or manner of display of signs shall be punishable by a fine of not less than \$10 or more than \$500, with each day that a violation continues being considered a separate offense.

(1989 Code, § 10-45)

(2) *Temporary or portable sign.* Any person or business who displays a temporary or portable sign and fails to obtain a permit for such a sign in the manner described § 151.076(H) may be liable for a fine not to exceed \$50 per day, and that each day constitutes a separate offense, and may be denied temporary sign privileges for a period not to exceed six months.

(1989 Code, § 10-39)

(3) *Permanent sign.* Any person or business who displays a permanent sign and fails to obtain a permit for such a sign in the manner described in § 151.076(I) may be liable for a fine not to exceed \$50 per day, and that each day constitutes a separate offense.

(1989 Code, § 10-39)

(4) *Inspection of signs.* The owner of the sign shall be fined up to \$1,000 for his or her failure to remove, change or alter the sign in accordance with the provisions of §§ 151.075 through 151.082.

(1989 Code, § 10-43)

(C) *Off-street parking regulations.* A violation of §§ 151.180 through 151.190 will be considered to be an ordinance violation and will result in a penalty of \$50 per day per violation. If a violation continues past one day, each subsequent day that the violation exists will constitute a new and separate violation subject to an additional \$50 for each day the violation continues to exist. Additionally, the town shall have the power to remove and impound any vehicle found to be in violation of §§ 151.180 through 151.190. The owner of an offending vehicle will be responsible for removal and impoundment fees as well as related legal fees and expenses incurred.

(D) *Permit fees.*

(1) Any person who attempts to construct, repair and install without the proper permits shall be liable for a fine of \$50.

(2) Any person who causes to have razed any structure built without said permit and each day constitutes a separate offense.

(3) Fines shall be deposited into the General Fund only.

(1989 Code, § 10-101)



(E) *Floodplain regulations.*

(1) 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 §§ 151.205 through 151.236.

(2) All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of this chapter. All violations shall be punishable by a fine as stipulated in §§ 151.251 and this section.

(a) A separate offense shall be deemed to occur for each day the violation continues to exist.

(b) The Town Zoning Administrator shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a standard flood insurance policy to be suspended.

(c) Nothing herein shall prevent the town 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. 178-92, passed - -; Ord. 40A, passed 7-11-1966; Ord. 105, passed 8-13-1981; Ord. 159-90, passed 4-12-1990; Ord. 160-90, passed 4-12-1990; Ord. 177-92/93, passed 3-11-1993; Ord. 238-02, passed 7-11-2002; Ord. 267-06, passed 7-13-2006; Ord. 03-2010, passed 9-9-2010)