

## ***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 " " " " 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

(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)