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CH14 - APPENDIX A

CH14 1.1 - Title

These regulations shall hereafter be known and cited as the Zoning Ordinance of Lapel, Indiana.

CH14 1.2 - Interpretation, Conflict and Separability

A. In their interpretation and application the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

B. Conflict with Public and Private Provisions

- i. **Public Provisions.** The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations, or any other ordinance, rule or regulation, or other provision of law, those provisions which are more restrictive or impose higher standards shall control.
- ii. **Private Provisions.** These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of these regulations, or the determinations of the Commission in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder. Private provisions can only be enforced privately unless a public agency such as the Town Council or Plan Commission has been made a party to such agreements.
- iii. **Separability.** If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in all controversy in

which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The Town of Lapel hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application.

CH14 1.3 - Saving Provision

This ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing zoning ordinance, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the Town of Lapel under any section or provision existing at the time of the effective date of this ordinance, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the Town of Lapel except as shall be expressly provided for in this ordinance.

CH14 1.4 - Exclusion

Nothing in this Ordinance or in any rules, regulations or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, plan commission or board of zoning appeals now or hereafter established, to restrict or regulate the exercise of the power of eminent domain by the State of Indiana or by any state agency, or the use of property owned or occupied by the State of Indiana or any state agency. As used in this section, the term "state agency" shall mean and include all state agencies, boards, commissions, departments, and institutions, including state universities of the State of Indiana.

CH14 1.5 - Effective Date

This ordinance takes effect January 18, 1994.

CH14 1.6 - Repealer

Upon the adoption of this ordinance according to law, the [Lapel Zoning Regulations adopted on January 18, 1994] as amended and all prior zoning maps are hereby repealed.

CH14 1.7 - Amendments

For the purpose of providing for the public health, safety, and general welfare, the Town, on recommendation of the Commission, may from time to time amend the text of this ordinance and/or the zoning map(s) incorporated by reference in this ordinance. Public hearings on all proposed amendments shall be held by the Commission and/or the Town in the manner prescribed by law.

CH14 1.8 - Enforcement, Violation, and Penalties

- A. It shall be the duty of the Administrator to enforce these regulations and to bring any violations or lack of compliance to the attention of the Town Attorney who may file a complaint against the person and prosecute the alleged violation.
- B. Any person may, by suit in a circuit or superior court of the county, enjoin the violation of this Ordinance.
- C. The (Advisory) Board of Zoning Appeals by mandatory injunction in the circuit court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this Ordinance, or the removal of any use or condition permitted in violation of this Ordinance.
- D. A use that violates this Ordinance shall be treated as if it were a common nuisance, and the owner or possessor of the structure, land, or premises upon which the use is maintained shall be liable for such nuisance.
- E. Any person whether owner or possessor who shall violate, or who permits or allows a violation, of any of the provisions of this ordinance, or who fails to comply therewith or with any requirements thereunder or who shall build, reconstruct, or structurally alter any building in violation of any detailed statement or plan submitted upon which an approval or grant is given under this ordinance shall, upon complaint filed in any court of the county and upon judgment finding such violation, shall be fined not less than \$10.00 and not more than \$300.00, and each day that such violation or noncompliance shall be permitted to exist, shall constitute a separate violation. The fine for not obtaining a building permit, pursuant to the provisions of this ordinance, shall be an amount of five (5) times the cost of the permit. Any person in violation of the provisions of this ordinance for failure to comply therewith shall be responsible for any and all court costs and attorney fees incurred, by the Town of Lapel in enforcement. (Ord. 10-1997, passed 8/16/97)
- F. No Improvement Location Permit or Building Permit required under the Uniform Building Code or this ordinance shall be issued on any property subject to this ordinance in violation of the provisions of this ordinance.
- G. That no building permit, improvement permit, construction permit, shall be issued for a dwelling, structure, or physical improvement, that is not located within one legally described parcel in the existing corporate boundaries of the Town of Lapel, Madison County, Indiana. Ord No. 1-2006, passed 1/5/2006.
- H. Attorney's Fees. Notwithstanding anything contained in this Ordinance to the contrary or appearing to be to contrary, and in addition and supplementary to other provisions of this Ordinance, if the Board of Zoning Appeals or the Town of Lapel is required to utilize the services of the Town of Lapel attorney or any other attorney in investigating a possible violation of this ordinance or enforcing the provisions of this Ordinance pursuant to Section 1.8C, 1.8D or 1.8E, or any other Section, before any board or court (including appeals), and such investigation results in a determination that a violation has occurred or if the Board of Zoning Appeals or Town of Lapel is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceeding, the respondent, defendant or party investigated for a violation shall pay the Town's reasonable attorney fees and all costs related to the investigation of the violation and/or the enforcement of this Ordinance, unless such attorney fees or costs are specifically waived by the Council of the Town of Lapel.
- I. Costs on Appeal. As to any appeal from a decision of the Board of Zoning Appeals, costs may not be allowed against the Board of Zoning Appeals unless it appears to the court that the Board acted with

gross negligence or in bad faith in making the decision brought up for review.

J. The Administrator, his staff, or any person or persons assisting the Administrator in the application and enforcement of this Ordinance is hereby authorized to go onto private property for the purpose of conducting inspections required by the Ordinance or any order of the Plan Commission and Board of Zoning Appeals, or required to determine if this Ordinance is being violated, or required to enforce this Ordinance. Such inspection or inspections shall occur at reasonable times and shall be conducted in a manner not to disturb the peace.

CH14 1.9 - Designation of the Administrator

The Town of Lapel hereby designates its Inspector as the Administrator for the purposes of implementing this ordinance and has the principal responsibility for enforcing this ordinance.

CH14 2.1 - Definitions

Preface

The purpose of this section is to explain the meaning of the more important terms used in the text of the Lapel Zoning Ordinance. By making these meanings explicit, the risk of arbitrary administrative decisions through lack of understanding is reduced and fair administration of the ordinance enhanced; also those preparing applications will have their tasks made easier if the purposes, processes, and requirements of the ordinance are more clearly comprehended. Common understanding of the ordinance will facilitate adherence to it and the accomplishment of the stated public purposes for all parties affected by the ordinance in regard to adherence to its provisions and to the means of amending its text and maps.

It is extremely important that the definitions in the zoning ordinance be in agreement with the definitions in the Lapel Subdivision Ordinance and other development-related regulations in order to avoid conflicts between them. The lists of definitions need not be the same but those appearing in several ordinances should be in agreement although not necessarily equally comprehensive because of the differences of purpose of the various development-related ordinances. The definitions given here, for example, are in agreement with those in the recently published revised version of Highway Extension and Research Project for Indiana Counties and Cities Subdivision Regulations.

The definitions given here are designed to give maximum protection to the Town of Lapel in their regulation of land uses and should not be modified or abridged without sufficient reasons and careful consideration in the light of local conditions. Some additional terms may need to be defined if they are used frequently locally. It is also essential that the definitions finally used in the adopted ordinance reflect and not conflict with the actual terminology used in the text of all sections. This, of course, may vary somewhat in accordance with conditions unique to the Town of Lapel adopting an ordinance based on this Lapel Zoning Ordinance.

Only terms having a specific or narrow meaning will be defined. The dictionary definition will be used for terms not specifically defined in this Lapel Zoning Ordinance.

Definitions

Accessory Building. A subordinate structure, the use of which is incidental to that of the dominant use of the primary building or land.

Accessory Use. A subordinate use which is incidental to that of the primary use and is a use other than human occupancy.

Actual Construction. (See 4.3 (c)).

Administrator. The officer appointed by and/or delegated the responsibility for the administration of these regulations by the planning commission. The Town of Lapel, Indiana is hereby designated as the Administrator for the purposes of implementing this ordinance and is the Town of Lapel, Indiana officer referred to herein wherever the term Administrator appears.

Advisory Plan Commission. A planning commission serving a single local government jurisdiction established as defined under the Indiana Code, ss 36-7-1-2 (1983) as amended. The Lapel Plan Commission is an Advisory Plan Commission.

Alley. A public or private way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on some other street.

Applicant. The fee simple owner of land who makes application to the Lapel Plan Commission for action by said commission thereby affecting that land.

Arterial Street. Either a primary arterial or secondary arterial as defined in this section.

Bed and Breakfasts: Homestay. A small establishment, having one to three bedrooms for rent to transients as an activity which is subordinate and incidental to the main residential use of the building. These are generally treated as tourist homes.

Bed and Breakfast Inns. Establishments ranging from four to twenty guest rooms and may include restaurants that cater to the general public as well as to overnight guests. These are treated as commercial enterprises.

Billboard. See Sign, Outdoor advertising.

Block Face. One side of a street between intersections.

Block. A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways, or boundary lines of municipalities.

Board. The Advisory Board of Zoning Appeals of Lapel.

Boarding House. A building, not available to transients, in which meals are regularly provided for compensation for at least three inhabitants in addition to the owner occupant.

Boarding Kennel. A place primarily for keeping four or more dogs, or other small animals that are ordinarily kept as pets, and are at least four months old (which shall not include dangerous animals).

Buffer Landscaping. Any trees, shrubs, walls, fences, berms, or related landscaping features required under this ordinance or the Subdivision Regulations to be placed on private property and privately maintained or in public rights-of-way for the purpose of buffering lots from adjacent properties, for aesthetic purposes, and/or for creating sound barriers and/or visual privacy.

Building. Any roofed structure built for the support, shelter, enclosure, or protection of persons, animals, chattels or moveable property of any kind (each part of such a structure that is separated from the rest by unbroken party walls is considered to be a separate building for the purposes of this ordinance).

Building Area. The horizontal projected area of the buildings on a lot, excluding open areas or terraces, unenclosed porches not more than one story high, and architectural features that project no more than two feet.

Building Line. The line that establishes the minimum permitted distance on a lot between the front line of a building and the street right-of-way line.

Building Permit. See Location Improvement Permit.

Business. The purchase, sale, or exchange of goods or services, or the maintenance for profit of offices or recreational or amusement enterprises.

Business District. Refers to the HS, LB, GB, CB & OD districts.

Campground. Any site, lot, field, or tract of land under single ownership, or ownership of two or more people, designed with facilities for short term occupancy by recreational vehicles and other camping equipment but not including mobile homes.

Cemetery. Includes any columbarium, crematory, mausoleum, or mortuary operated in conjunction with and on the same tract as the cemetery.

Clinic. An establishment in which patients are admitted for medical or dental study or treatment and in which the services of at least two physicians or dentist are provided.

Dwelling Unit. A dwelling or part of a dwelling used by one family as a place of abode.

Easement. An authorization grant made by a property owner for use by another of any designated part of his property for a clearly specified purpose and officially recorded.

Family. One or more persons sharing meals and living as a single housekeeping unit.

Farm. An area used for agricultural operations, including truck gardening, forestry, the operating of a tree or plant nursery, or the production of livestock and poultry.

Flood Hazard Areas. Those flood plains which have not been adequately protected from flooding caused by the regulatory flood, and are shown on the zoning map and/or on the Flood Hazard or Floodway-Flood Boundary Maps of the Federal Insurance Administration or maps provided to the Commission from the Indiana Natural Resources Commission.

Flood Plain. The area joining the river or stream which has been or may hereafter be covered by flood water from the Regulatory Flood.

Flood Protection Grade. The elevation of the lowest floor of a building, including the basement, which shall be two feet above the elevation of the regulatory flood.

Floodway. See Regulatory Floodway.

Floodway Fringe. That portion of the flood plain lying outside the floodway, which is inundated by the regulatory flood.

Foundation. The supporting member of a wall or structure.

Front Line. With respect to a building, means the foundation line that is nearest the front lot line.

Front Lot Line.

1. For an interior or through lot, means the line marking the boundary between the lot and abutting street or a lake or watercourse; and
2. For a corner lot, means the line marking the boundary between the lot and the shorter of the two abutting street segments.

except as deed restrictions specify otherwise.

Front Yard. The horizontal space between the nearest foundation of a building to the right-of-way line and that right-of-way line, extending to the side lines of the lot, and measured as the shortest distance from that foundation to the right-of-way line. The front yard of a corner lot shall be that yard abutting the street upon which the lot has its least frontage, except as deed restrictions specify otherwise.

Garage or Yard Sale. (See 4.4).

General Industrial Use. Manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which some operations, other than transportation, are performed in open area.

Group Home. A single self-contained children's home established and operated by the county department of welfare, licensed private child placement agency or licensed incorporated group established for the purpose of receiving and caring for up to eight children who are attended by house "parents."

Ground Floor Area. The area of a building in square feet, as measured in a horizontal plane at the ground level within its largest outside dimensions, exclusive of open porches, breezeways, terraces, garages, and exterior stairways.

Hardship. A perceived difficulty with regard to one's ability to improve land stemming from the application of the development standards of this Ordinance, which may or may not be subject to relief by means of variance. In and of themselves, self imposed situations and claims based on a perceived reduction of or restriction on economic gain shall not be considered hardships. Self-imposed situations include: the purchase of land with actual or constructive knowledge that, for reasons other than physical characteristics of the property, the development standards herein will inhibit the desired improvement; any improvement initiated in violation of the standards of this Ordinance; any result of land division requiring variance from the development standards of this Ordinance in order to render that site buildable.

Height. With respect to a building, means the vertical distance from the lot ground level to the highest point, for a flat roof; to the deck line, for a mansard roof; and to the mean height between eaves and ridges, for a gable, hip, or gambrel roof.

Historical. A contiguous district is a geographically defined area wherein the properties are unified by past events, by physical development, or by plan. A contiguous district often includes properties that are not considered worthy of National Register status: such buildings are identified as "non-contributing". However, buildings may be considered as contributing to the district if they are not by themselves outstanding but add to the district's sense of time and place and historical development.

Home Service. The use of a home for a business or professional service which does not involve treating or attending a person or animal, except consultation or treatment by members of the medical and dental professions, beauticians, seamstresses and day care homes, which is established entirely within a dwelling unit and is conducted only by members of the family residing in the same dwelling unit.

Improvement Location Permit. A document issued under Section Nine of this Ordinance permitting a person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure within its jurisdiction, or cause the same to be done or to change the use or condition of the land.

Interior Lot. A lot other than a corner lot or a through lot.

Interested Parties. Those parties who are owners of properties adjoining or adjacent to the property for which a zoning change is being sought.

Junk Yard. A place, usually outdoors, where waste or discarded used property other than organic matter, including but not limited to automobiles, farm implements and trucks, is accumulated and is or may be salvaged for reuse or resale; this shall not include any industrial scrap metal yard.

Light Industrial Use. Manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which all operations, other than transportation, are performed entirely within enclosed buildings and for which all loading and unloading facilities are enclosed.

Local Street. A street intended to provide access to other streets from individual properties and to provide right-of-way beneath it for sewer, water, and storm drainage pipes.

Lodging House. A building, not available to transients, in which lodgings are regularly provided for compensation for at least three persons in addition to the owner occupant.

Lot. A tract, plot, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or of building development.

Lot, Corner. A lot situated at the intersection of two (2) streets, the interior angle of such intersection not exceeding 135 degrees. A lot with streets abutting more than two (2) sides shall also be a corner lot.

Lot Coverage. The percentage of the lot area that is represented by the building area.

Lot Ground Level.

1. For a building having walls abutting (that is, generally parallel to and not more than five feet from) one street only, means the elevation of the sidewalk at the center of the wall abutting the street;
2. For a building having walls abutting more than one street, means the average of the elevations of the sidewalk at the centers of all walls that face streets; and
3. For a building having no wall abutting a street, means the average level of the ground adjacent to the exterior walls of the building.

Lot Width. The distance between the side lot lines as measured on the building line.

Maneuvering Aisle. A maneuvering space which serves two or more parking spaces, such as the area between two rows of parking spaces and/or the driveway leading to those spaces.

Maneuvering Space. An open space in a parking area which: 1) is immediately adjacent to a parking space; 2) is used for and/or is necessary for turning, backing or driving forward a motor vehicle into such parking space, but 3) is not used for the parking or storage of motor vehicles.

Manufactured Home. A single-family dwelling unit designed and built in a factory, installed as a permanent residence, which bears a seal certifying that it was built in compliance with the federal Manufactured Housing

Construction and Safety Standards Law (1974 U.S.C. 5401 et seq.), and which also complies with the following specifications:

1. shall have been constructed after January 1, 1981 and must exceed nine hundred fifty (950) square feet of occupied space per Indiana Code [36-7-4\(d\)](#);
2. is attached to a permanent foundation of masonry construction and has a permanent perimeter enclosure constructed in accordance with the One and Two Family Dwelling Code;
3. has wheels, axles, and towing chassis removed;
4. has a pitched roof with a minimum rise of 2/12; and,
5. consists of two (2) or more sections which, when joined, have a minimum dimension of 20' x 47.5' in length or width enclosing occupied space.

Mineral Extraction. (1) mining or quarrying; and (2) removal of earth materials.

Mobile Home. Any vehicle without motive power designated by the manufacturer or maker with hitch and undercarriage to permit attachment of axles and wheels, and so designed to permit its being used as a conveyance upon public streets and highways and so designed, constructed or reconstructed as will permit the vehicle to be used as a single-family dwelling and not qualifying under the definition of manufactured home.

Nonconforming Use. A building, structure or use of land existing at the time of enactment of this ordinance, which does not conform to the regulations of the district in which it is situated.

Occupied Space. The total area of earth horizontally covered by the structure, excluding garages, patios and porches and other accessory structures.

One and Two Family Dwelling Code, Indiana. The nationally recognized model building code adopted by the Indiana Department of Fire Prevention and Building Safety as mandated by Public Law 360, Act of 1971, and, which includes those supplements and amendments promulgated by this agency.

Open Use. The use of a lot without a building, or a use for which a building with a floor area no larger than five percent of the lot area is only incidental.

Parking Area. A group of parking spaces, exclusive of any part of a street or alley, designed or used for the temporary parking of motor vehicles.

Parking Garage. A garage, where parking but not repairs are available to the public.

Parking Space. An open space exclusive of maneuvering aisle and driveway for the parking of a motor vehicle.

Permanent Foundation. A structural system for transposing loads from a structure to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the supporting soil.

Permanent Perimeter Enclosure. A permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground, except for necessary openings, constructed in accordance

with the One and Two Family Dwelling Code.

Person. A corporation, firm, partnership, association, organization, unit of government, or any other group that acts as a unit, as well as a natural person.

Plat. A map indicating the subdivision or resubdivision of land filed or intended to be filed for record with the County Recorder.

Planned Development. A unified development meeting the requirements for zoning approval under the provisions of Section Six of this ordinance.

Primary Arterial. A street intended to move through-traffic to and from such major attractions as central business districts, regional shopping centers, colleges and/or universities, military installations, major industrial areas, and similar traffic generators within the Town or County; and/or as a route for traffic between communities; a major intra or intercity thoroughfare as designated by and shown on the Thoroughfare Plan.

Principal Building. A building in which the principal use of the lot or parcel on which it is located is conducted. Standards recognized by the Indiana Department of Fire Prevention and Building Safety shall be used to determine whether a given structure constitutes one or more buildings in cases where ambiguities exist.

Private Garage. A garage whose principal use is to house motor vehicles for the accommodation of related dwelling units or related business establishments.

Private School. A school other than a public school.

Private Camp. An area of land used or designed to be used to accommodate groups or organized camping parties, including cabins, tents, food service, and recreational facilities.

Professional Office. An office used by members of a recognized profession including but not limited to architects, artists, dentists, engineers, lawyers, musicians, physicians, surgeons or pharmacists, and realtors or insurance agents and brokers.

Public Improvement. Any drainage ditch, street, highway, parkway, sidewalk, pedestrian-way, tree, lawn, off-street parking area, lot improvement, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established. (All such improvements shall be properly bonded.)

Rear Lot Line. For an interior or corner lot, this means the lot line that is opposite the front lot line and farthest from it, except that for a triangular or other irregularly-shaped lot it means the line ten feet long, parallel to the front lot line, and wholly within the lot, that is farthest from the lot line.

Rear Yard. A yard as defined herein, encompassing the horizontal space between the nearest foundation of a building rear lot line and that rear lot line, extending to the side lines of the lot, and measured as the shortest

distance from the foundation to the rear lot line. The rear yard of a corner lot shall be that yard at the opposite end of the lot from the front yard.

Recreational Vehicle. A portable vehicular structure designed as a temporary dwelling for travel and vacation uses which:

1. is identified on the unit by the manufacturer as a travel trailer or a motor home; and
2. of a size that is street legal;

or:

1. is a structure mounted on an automobile or truck; and
2. is designed to be used for sleeping and human habitation.

Regulatory Flood. That flood having a peak discharge which can be equaled or exceeded on the average of once in a one hundred (100) year period, as calculated by a method and procedure which is acceptable to and approved by the Indiana Natural Resources Commission; this flood is equivalent to a flood having a probability of occurrence of one percent (1%) in any given year.

Regulatory Floodway. The channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge peak flow of the regulatory flood of any river or stream and, is that area covered by floodwaters in significant downstream motion or covered by significant volumes of stored water during the occurrence of the regulatory flood.

Residential District. Those districts, R-1, R-2, and R-3 as described under Section 3, Districts.

Scrap Metal Yard. A general industrial use established independent or ancillary to and connected with another general industrial use, which is concerned exclusively in new and salvaged metal pipes, wire, beams, angles, rods, machinery, parts, filings, clippings, and all other metal items of every type, and which acquires such items incidental to its connection with the other general industrial use or by purchase, consignment or bailment which stores, grades, processes, melts, cuts, dismantles, compresses, cleans, or in any way prepares said items for reuse by the connected other general industrial use or for sale and shipment and use in other industries or businesses including open hearth, electric furnaces and foundry operations; such an establishment shall not include junk yards, dumps, or automobile graveyards. The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as wood, paper, rags, garbage, bones and shattered glass on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as either a junk yard, a sanitary fill or refuse dump depending on the content of the accumulated matter.

Secondary Arterial. A street intended to collect and distribute traffic in a manner similar to primary arterials, except that these streets service minor traffic generating areas such as community-commercial areas, primary and secondary educational plants, hospitals, major recreational areas, churches, and offices, and/or designed to carry traffic from collector streets to the system of primary arterials as designated by and shown on the Thoroughfare Plan.

Section. A unit of a manufactured home at least ten (10) feet in width and thirty (30) feet in length.

Setback. A line parallel to and equidistant from the relevant lot line (front, back, side) between which no buildings may be erected as prescribed in this ordinance.

Side Lot Line. Any lines separating two lots other than front or rear lot lines.

Side Yard. The horizontal space between the nearest foundation of a building to the side lot line and that side lot line, unoccupied other than by architectural appurtenances projecting nor more than twenty-four (24) inches into that space; steps or terraces not higher than the level of the first floor of the building; and open lattice enclosed fire escape, fireproof outside stairways and balconies projecting not over twenty-four (24) inches into that space.

Sign. A visual device or structure used for advertising, display or publicity purposes.

Sign, Outdoor Advertising. A structural poster panel or painted sign, either freestanding or attached to a building, for the purpose of conveying information, knowledge, or ideas to the public about a subject unrelated to the activities on the premises upon which it is located.

Sign, Portable. A free-standing, on-premise advertising device which is designed to be moved from one location to another and is not permanently affixed to the ground or to a structure, or is only affixed by means of tiedown straps or stakes;

Special Use. The authorization of a use that is designated as such by this ordinance as being permitted in the district concerned if it meets special conditions, and upon application, is specifically authorized by the Advisory Board of Zoning Appeals.

Street. A right-of-way that is purchased by a governmental unit or is established by a recorded plat and publicly maintained to provide the principal means of access to abutting property.

Structural Change. A substantial change in a supporting member of a building, such as a bearing wall or partition, column, beam, or girder, or in an exterior wall or the roof.

Structure. Anything constructed or erected that requires location on or in the ground or attachments to something having a location on or in the ground.

Subdivision. The division of a parcel of land into two (2) or more lots, parcels, sites, units, plats, or interests for the purpose of offer, sale, lease, or development, either on the installment plan or upon any and all other plans, terms, and conditions, including resubdivision.

Through Lot. A lot fronting on two parallel or approximately parallel streets and includes lots fronting on both a street and a watercourse or lake.

Tourist Home. See Bed and Breakfast: Homestay

Trade or Business School. A secondary or higher education facility teaching usable skills that prepare students for jobs in a trade, business or vocation

Use. The employment or occupation of a building, structure or land for a person's service, benefit or enjoyment.

Use Variance. The approval of a use other than that prescribed by this zoning ordinance. Changes of allowed uses are not permitted by this ordinance except by zoning map amendment.

Variance. A specific approval granted by the Advisory Board of Zoning Appeals in the manner prescribed by this Ordinance, to deviate from the development standards (such as height, bulk, area) that the Ordinance otherwise prescribes.

Yard. A space on the same lot with a principal building that is open and unobstructed except as otherwise authorized by this ordinance.

CH14 3 .0 - Districts

Preface

This section lists and describes two kinds of districts: 1) "as of right" districts in which a limited range of similar, compatible uses are permitted under the restrictions given for each district and in which a limited number of special uses may also be permitted on application to the Board of Zoning Appeals which may also set further restrictions and conditions, and, 2) "planned development districts" which conditionally allow various mixes of uses provided the development plan agreed by the owner and the plan commission and local legislative body to have been designed to eventuate in a compatible, mutually beneficial arrangements of uses on the land.

This section and its subsections importantly set the stage for the one that follows, Authorized Uses, describing in detail those uses permitted in each district and the standards which must be met by each of these uses in order for them to be compatible with other uses and, hence, allow them to be permitted.

The "planned development" technique is especially applicable where a variety of mixed, mutually-supportive uses can be made to be compatible through carefully organized design processes or for a site that is environmentally or topographically sensitive. This is a tool for flexible control of complex use arrangements.

CH14 3 .1 - Kinds of Districts Establishment

The Town of Lapel is divided into the following districts:

A. Agriculture Districts, designated "A", are established to include substantial areas to preserve and protect the decreasing supply of prime agricultural land where little or no urbanization has occurred or is likely to occur in the near future. This district also is established to control the indiscriminate infiltration of urban development in agricultural areas which adversely affects agricultural operators.

- B. **Conservation Districts**, designated "C-1" is limited to agricultural, recreational, and certain other open land uses. Residential and related uses may be permitted if approved by the Commission. The purpose of this district is to prevent intensive development of land that is unsuitable for development because of topography, soil condition, periodic flooding, or other natural features.
- C. **Flood Plan Districts**, designated "FP" are established to include lowland areas adjacent to lakes and ponds, and areas that are within the flood plains of rivers or creeks and are thus subject to inundation and damage from flood waters up to the elevation of the regulatory flood.
- D. **Residence Districts**, designated "R1", are established to include areas for low density single-family residences with a density of 4 dwelling units or less per gross acre.
- E. **Residence Districts**, designated "R2", are established to include areas for medium density single-family residences with a density of 6 dwelling units or less per gross acre.
- F. **Residence Districts**, designated "R3", are established to include areas for relatively high density single-family, two-family, and multi-family residential development with a density of 12 dwelling units or less per gross acre.
- G. **Highway Service Districts**, designated "HS", are established to include areas that are close to interstate interchanges and intersections of two state highways and are appropriate to the limited shopping and service needs of those locations.
- H. **Historical Districts**, designated "H" are established to include a contiguous district that is a geographically defined area wherein the properties are unified by past events, by physical development, or by plan. A contiguous district often includes properties that are not considered worthy of National Register status, such buildings are identified as "non-contributing". These buildings may be considered as contributing to the district if they are not by themselves outstanding but add to the district's sense of time and place or historical development.
- I. **Local Business Districts**, designated "LB" are established to include areas that are close to residential areas and appropriate to meeting their shopping and service needs.
- J. **General Business Districts**, designated "GB", are established to include areas that are appropriate to all kinds of business and services.
- K. **Central Business District**, designated "CB", is established to include the Lapel's core business area. The purpose of the district is to encourage expansion and renewal in the historic core business area of the community. A variety of business, institutional, public, quasi-public, cultural, residential, and other related uses are encouraged to provide the mix of activities necessary for a truly urban district.
- L. **Office Districts**, designated "OD", are established to include office park facilities, and related office and business services.
- M. **Industrial Districts**, designated "I", are established to include most of the existing industrial facilities and areas best suited for future industrial use because of location, accessibility and other conditions. The districts shall be defined as follows:
- A. Light Industrial (I-1); the purpose of the district is to encourage the development of manufacturing and wholesale business establishments which are clean, quiet, and free of hazardous or objectionable elements such as noise, odor, dust, smoke, or glare; operate entirely within enclosed structures and generate little industrial traffic. Research activities are encouraged. The I-1 district

is designed to act as a transitional use between heavy industrial uses and other less intense business and residential uses.

B. Heavy Industrial (I-2); the purpose of the district is to encourage the development of major manufacturing, processing, warehousing, and major research and testing operations. These activities require extensive community facilities, and reasonable access to arterial highways; they may have extensive open storage and service areas, generate heavy traffic but shall be prohibited if they create nuisances beyond the limitations set by the Commission.

C. Extractive Industrial (I-3); the purpose of the district is to provide land for the mining, processing, and storage of mineral resources. This district is designed to assure that these resources be properly managed and all land be reclaimed as not to create a hazard or nuisance which either immediately or in the future adversely affects the health, safety, or general welfare of the community.

N. **Planned Development Districts**, designated "PD-R", "PD-C", "PD-I", "PD-REC", and "PD-E" are established for the purposes and under the conditions set forth in Section 6 hereof.

CH14 3 .2 - Boundaries in General

A. The boundaries of the districts established by section 3.1 are as shown on the zone map which is a part of this Ordinance, and hereafter known as the Official Zoning Map for the Town of Lapel. Said Official Zoning Map shall hereafter be kept in the custody of the Administrator of Lapel, Indiana. Except as provided by Section 3.3, such boundaries and the Official Zoning Map shall be changed only by amendment to the Official Zoning Map. Upon such amendment the Town of Lapel shall within (5) days of passage of such amendment, certify a copy of such amendment to the Administrator, who shall immediately change the Official Zoning Map in accordance with such amendment. The Administrator shall cause the Official Zoning Map to show the Ordinance number and date of adoption of all such amending ordinances.

B. When the exact boundaries of a district are uncertain, they shall be determined by use of the scale of the zoning map.

C. When the maps are caused to be changed by amendment the change shall be to the center of any and all abutting rights-of-way.

D. If the boundary line of a district divides a lot having frontage on a street so that the front part of the lot lies in one district and the rest of the lot lies in another, use requirements and restrictions that apply to the front part of the lot apply to the entire lot.

CH14 3 .3 - Boundaries Flood Plain Districts

The boundary of an FP District may be changed if the Indiana Natural Resources Commission, after investigating the land involved, determines (1) that the requested change would not endanger the public welfare, and (2) that the elevation of such land is at or above the elevation of the regulatory flood. Such determination shall be made in writing upon the request of the applicant who shall provide the Indiana Natural

Resources Commission with a scale drawing identifying the location, dimensions and elevations related to the USGS datum of the land.

If the land within the boundary of an FP District is certified by a Registered Land Surveyor or Registered Professional Engineer as having an elevation at or above the regulatory flood elevation, as determined by the Indiana Natural Resources Commission, that area of land so certified will be removed from the FP designation and will become zoned as the adjacent areas on the zoning map. Should the adjacent areas contain more than one zoning district, the line dividing those existing districts shall be extended through the land so removed from the FP District. Should an area, certified as having natural ground elevation at or above that of the regulatory flood, be adjacent to no district other than flood plain (i.e., surrounded by flood plain), it will be designated A, Agriculture, until or unless the legislative body alters that designation by ordinance. However, in the case of islands created by fill material only those islands located in the floodway fringe will be redesignated. Islands created in the floodway will still be considered part of the floodway. However, in no case shall an area derive A zoning from its adjacency to land removed by certification from the FP district if the area also abuts another zoning classification. It shall derive its zoning from the adjacent district.

Buildings permitted on lands within one hundred (100) feet of the FP District shall be required to comply with the flood protection grade as established by the Indiana Natural Resources Commission.

All lands, within the flood plain having an elevation below that elevation determined by the Indiana Natural Resources Commission to be the regulatory flood elevation for that location shall be in the FP District.

CH14 3 .4 - Subdivisions, Cluster Developments, Planned Developments, Condominiums and Zero Lot Line Developments

The subdivision of land pursuant to the requirements of the Lapel Subdivision Ordinance shall be permitted in these districts: A, FP, R1, R2, R3, CB, HS, LB, GB, I, and OD. The intended principal use of each of the proposed lots within a proposed subdivision shall govern the specific district or districts appropriate to the land to be subdivided, as per 4.1 of this ordinance.

However, the following classifications of subdivisions shall only be permitted in R1, R1, or R3 districts: major subdivisions intended entirely for residential use, and any portions of major subdivisions intended for residential use;

Planned Developments shall be permitted only in these districts: PD-R, PD-C, PD-I, PD-REC and PD-E, as per Section 6.2 of this ordinance. In order to provide greater design flexibility, and to encourage innovative land development techniques and a more efficient use of land, the design and development of uses within these districts may deviate from the standard prescribed by the Lapel Subdivision Ordinance and sections 5.1 through 5.14 of this ordinance.

Condominiums, as defined and regulated in Indiana Code [32-1-6](#) (the Horizontal Property Law), cluster developments, zero lot line developments and all developments of the minimum sizes specified in Section 6.2 of this ordinance and larger shall be considered for zoning purposes to be Planned Developments, and

consequently shall be permitted only in these districts: PD-R, PD-C, PD-I, PD-REC and PD-E, as per Section 6.2 of this ordinance.

CH14 4 .0 - Authorized Uses

Preface

The purpose of this section is to describe the uses which are permitted, either by right or by special exception, and the conditions under which they are authorized in the districts described in the previous Section.

Subsection 4.1 deals with "primary" as opposed to secondary, ancillary or "accessory" uses. Subsection 4.2 lists those accessory uses which are permitted. Subsection 4.3 deals with the problem of non-conforming uses and structures. It describes the various kinds of non-conformance and the limitations placed on such uses and structures in order to discourage their continued existence. Subsection 4.4 deals with the conditions for allowing garage or yard sales as a temporary use. The chart which concludes this chapter provides a convenient means of seeing which uses are authorized in each of the districts described in Section 3.

It is in this section that the Town of Lapel can express local experience and attitudes in regard to preserving and enhancing the quality of development in a manner appropriate to the character of our community.

CH14 4 .1 - New Ordinance

CH14 4 .1 - Primary Uses

Primary uses are authorized in the districts established by or under Section 3.1 as shown by an "X" in the table at the end of this section. Where the use is designated for the district with an "S", the use is permitted in that district only if a special use has been approved under Section 8.3.

CH14 4 .2 - Accessory Uses

Accessory uses such as the following are authorized in all districts subject of the provisions of any and all recorded restrictive covenants running with the land:

- i. Bird baths and bird houses
- ii. Accessory buildings
- iii. Curbs
- iv. Driveways
- v. Fences and Hedges*
- vi. Lamp posts
- vii. Mail boxes
- viii. Name plates
- ix. Parking spaces

- x. Private swimming pools enclosed by a 6-foot high fence or, 6-foot vertical enclosure integral with an above ground pool Ord. No. 7-2000, passed 6/15/00
- xi. Public utility installations for local service (such as poles, lines, hydrants, and telephone booths)
- xii. Retaining walls
- xiii. Trees, shrubs, plants and flowers
- xiv. Walks

* Provided that, in any residence district, ornamental fences and hedges shall not exceed three feet in height in the required front yard, except that open chain link fences may be erected to four feet in height, or as provided in section 5.7.

CH14 4 .3 - Nonconforming Uses and Structures

A). Intent

Within the districts established by this ordinance or by amendments that may later be adopted, there may exist:

- i. Nonconforming lots;
- ii. Nonconforming structures;
- iii. Nonconforming uses of land;
- iv. Nonconforming uses of land and structures in combination; and
- v. Nonconforming characteristics of use.

These were lawful before this ordinance was passed or amended, but they

are prohibited, regulated or restricted under the terms of this ordinance or may be under future amendments hereto. It is the intent of this ordinance to permit these nonconforming uses to continue until they are removed but not to encourage their survival. It is further the intent of this ordinance that nonconforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district. [Note: Illegal uses existing at the time this ordinance is enacted shall not be validated by virtue of its enactment.]

B). Incompatibility of Nonconforming Uses

Nonconforming uses are declared by this ordinance to be incompatible with

permitted uses in the districts in which such use is located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

C). Avoidance of Undue Hardship.

To avoid undue hardship, nothing in this ordinance shall be deemed to

require a change in the plans, construction, or designated use of any building or development on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently. Actual construction is hereby defined as work done which is beyond the preparation stage and into that stage where the changes or additions are made permanent.

D). Single Nonconforming Lots of Record.

In any district in which single-family dwellings are permitted, a single-

family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership or included in a subdivision of record in the office of the Madison County Recorder at the time of passage of this ordinance. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width or both, of the lots shall conform to the regulations for the district in which such lots are located. (Also see Section 5.3 (c)).

Variances of requirements listed in Section 5 of this ordinance, other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 8.4. [Note: This section shall apply only to single family residences.]

E). Nonconforming Lots of Record in Combination.

If two or more lots or a combination of lots and portions of lots with

continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance and no portion of said parcel shall be used or sold in a manner which diminishes compliance with the lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

F). Nonconforming Uses of Land.

Where, at the time of adoption of this ordinance, lawful uses of land exist

which would not be permitted by the regulations imposed by this ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

- i. No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
- ii. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this ordinance.
- iii. If any such nonconforming uses of land are discontinued or abandoned for more than one year except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulation specified by this ordinance for the district in which such land is located.
- iv. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

G). Nonconforming Structures.

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not now be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject of the following provisions.

- i. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- ii. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of the fair market value of the building immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this ordinance.
- iii. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

H). Nonconforming Uses of Structures or Structures and Land in Combination.

If a lawful use involving individual structures, or if a structure and land in

combination, exists at the effective date of adoption or amendment of this ordinance that would not now be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- i. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- ii. A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.

- iii. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
- iv. When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for more than one year (except when government action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- v. where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

I). Repairs and Maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure and market value of real estate, or nonconforming portion of the structure, whichever the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any order of such official. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

CH14 4 .4 - Garage or Yard Sale

- A. As used herein "garage or yard sale" is defined as a public or private sale conducted by the owner or occupier of a premise, and conducted within a residence, garage, other accessory buildings or outside thereof, which sale is of six or more items of personal property owned or in the possession of the owner or occupier of the premises, which personal property was not acquired by the owner or occupier for the purpose of resale.
- B. A garage or yard sale may be conducted no more than 3 times in any one calendar year on any premises located in any R1, R2, or R3 zone, but no such sale shall be conducted for more than three (3) consecutive days.
- C. Such garage or yard sale shall only be conducted during the hours from sunrise to sunset.
- D. All personal property exhibited for sale outside any structure during such garage or yard sale shall be removed from the outside and placed within a structure immediately following the last day of such sale. All signs erected for such garage or yard sale shall likewise be removed.

CH14 4 .5 - Automotive Repair

- A. Automobile Repair, Major -- Engine rebuilding or major reconditioning of worn or damaged motor vehicles or trailers, collision service, including body, frame or fender straightening or repair; and overall painting of vehicles.

B. Automobile Repair, Minor -- Incidental repairs, replacement of parts, and motor service to automobile, but not including any operation specified under "Automobile Repair, Major".

C. Gasoline Service Station: Buildings and premises where gasoline, oil, grease, batteries, tires, and motor vehicle accessories may be supplied and dispensed at retail.

Uses permissible at a filling station do not include major mechanical and body work, straightening of body parts, painting, welding, storage, of automobiles not in operational condition, or other work involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in filling stations. A filling station is not a repair garage nor a body shop.

CH14 5 .0 - Use Requirements and Restrictions

Preface

The purpose of this section is to set forth in detail the development standards and restrictions for those uses which are authorized and on which their continued authorization depends.

Each subsection deals with a particular development standard. These standards have been calculated to make good neighbors of different uses, to prevent nuisances, to promote the preservation of property values, and to provide sound, safe, compatible development for the general public good.

CH14 5 .1 - Height of Structures

A. Except as otherwise provided by this section, no structure may be erected or changed so as to make its height greater than twenty-five (25) feet if it is in an R1 or R2 District, or thirty-five (35) feet if it is in an A, R3, HS, LB, GB or OD District, or one hundred (100) feet if it is in a CB or I District.

B. A clinic that is authorized as a special use under section 4.1 may be erected or changed to a height not greater than forty (40) feet.

C. In a GB District, a business or light industrial structure may be erected or changed to a height not greater than seventy-five (75) feet. In a CB or I District, a business or industrial structure may be erected or changed to any height. This height exception does not extend to signs permitted for these uses.

D. An agricultural structure may be erected or changed to any height necessary for its operation.

E. The following structures may be erected or changed to any height not greater than thirty-five (35) feet when permitted in an R1 or R2 District:

i. Churches or temples (excluding signage)

ii. Public Libraries or museums

iii. Schools

iv. Government Buildings

F. Spires, church steeples, chimneys, cooling towers, elevator bulkheads, fire towers, scenery lofts, penthouses for mechanical equipment, stacks, tanks, water towers, transmission towers for electric lines, and necessary mechanical appurtenances may be erected or changed to any height that is not otherwise prohibited elsewhere in this ordinance.

CH14 5 .2 - Maximum Lot coverage: Residential Uses

The residential buildings on any lot may not exceed in coverage the following percentages of total lot area:

Maximum Lot Coverage

- i. **R1** - 30% coverage
- ii. **R2** - 35% coverage
- iii. **R3** - 40% coverage
- iv. **LB** - 25% coverage
- v. **CB*** - 60% coverage
- vi. **A** - 25% coverage

*There is no maximum lot coverage if the entire first story contains nonresidential uses.

CH14 5 .3 - Minimum Lot Size: Residential Uses

A. Except as provided for in 5.3(c), a lot on which a dwelling is erected or changed may not be smaller in area, in square feet per dwelling unit, than that prescribed for it in the following table. ("Changed" shall mean "increased in number of dwelling units contained therein," but shall not be construed to mean only refurbished, rehabilitated or expanded in size.)

- o **Lot Size in Square Feet and District**

- o Single-family

- R1 - 10,000sq ft
- R2 - 7,250sq ft
- R3 - 6,000sq ft
- LB - 6,000sq ft
- CB - 6,000sq ft
- A - 20,000sq ft

- o Two-family

- R1 -
- R2 -
- R3 - 3,000sq ft
- LB - 3,000sq ft
- CB - 3,000sq ft
- A - 5,000sq ft

- o Multi-family

- R1 -
- R2 -
- R3 - 2,000sq ft*
- LB - 2,000sq ft*
- CB - 800sq ft
- A -

- *This figure applies for each of the first three dwelling units - add 1,00 square feet for each additional unit.

B. Except as provided for in 5.3(c), a lot on which a dwelling is erected or changed may not be smaller in width, in linear feet, than that prescribed for it by the following table. ("Changed" shall mean "increased in number of dwelling units contained therein," but shall not be construed to mean only refurbished, rehabilitated or expanded in size.)

- **Lot Width in Feet and District**

- Single-family
 - R1 - 75ft
 - R2 - 60ft
 - R3 - 60ft
 - LB - 60ft
 - CB - -
 - A - 100ft
- Two-family
 - R1 -
 - R2 -
 - R3 - 60ft
 - LB - 60ft
 - CB - 50ft
 - A - 100ft
- Multi-family
 - R1 -
 - R2 -
 - R3 - 70ft
 - LB - 70ft
 - CB - 70ft
 - A -

C. A single-family dwelling may be located on any lot in any district in which single-family dwellings are permitted if the lot was in separate ownership or included in a subdivision of record in the office of the County Recorder at the time of the passage of this ordinance, even though the lot does not have the minimum lot width or the minimum lot area, or both, specified for the district by this ordinance.

CH14 5 .4 - Minimum Lot Size: Other Uses

- i. Airport - 80 acres
- ii. Cemetery or crematory* - 20 acres
- iii. Clinic - 15,000sq ft
- iv. Commercial facilities for raising and breeding nonfarm fowl and animals - 1 acres
- v. Junk Yard - 10 acres
- vi. Kindergarten or day care center - 110sq ft per child
- vii. Penal or correctional institution** - 320 acres

- viii. Police station or fire station - 15,000sq ft
- ix. Private camp or campground - 5 acres
- x. Public or commercial garbage disposal plant - 5 acres
- xi. Public or commercial sanitary fill, refuse dump or trash transfer station - 10 acres
- xii. Riding stable - 20,000sq ft plus 5,000sq ft for every horse over four.

*Does not apply to old town or city cemeteries

**Does not apply to a town, city, or county jail.

CH14 5.5 - Standard Setbacks

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

- A. A. In any district except the CB district, where there is no such requirement, minimum depth of front yard for a lot abutting a street shall be as follows:
- o Local or Place 25 feet
 - o Collector 30 feet
 - o Secondary Arterial 40 feet
 - o Primary Arterial 60 feet
 - o Arterials are designated by the Adopted Thoroughfare Plan; collectors are designated by resolution of the plan commission.
 - o However, along a local street in a residence district or business district other than CB, where fifty percent of lots in that block face are occupied by principal use buildings, minimum depth of front yard for that block face shall be the average depth of front yard for those buildings, provided that such front yard shall be no less than 10 feet. But buildings to be removed to make way for a new building shall not be included when calculating average depth of front yard to be applied to the new building.
 - o A through lot has a front yard on each abutting street.
 - o For any corner lot, these front yard setback standards shall also apply to the side yard(s) abutting a primary or secondary arterial, collector, local street or place.
Where a lot does not abut a street, minimum depth of front yard shall be 25 feet, measured from a designated front lot line.
 - o For any accessory building, minimum depth of front yard shall be the same as for the principal use building.
- B. Minimum depth of rear yard, in feet, for primary and accessory building shall be as follows:
- o Zoning Residential Use Nonresidential Use
District Primary Accessory Primary Accessory
R1, R2, R3, A 25 10 25 10

LB, OD 15 15 15 15
GB, HS 15 15 15/40* 15/40*
CB 0 0 0 0
I -- -- 15/40* 15/40*

* Where rear lot line abuts a residential district.

C. Minimum depth of side yard, in feet, for primary or accessory buildings shall be as follows:

- o Zoning District Residential Use Nonresidential Use

R1, R2, R3, A 6 6

LB, GB, OD, HS 0 0/10*

CB 0 0

I -- 0/30*

* Where side lot line abuts a residential district.

CH14 5 .6 - Setbacks: Accessory Buildings in Residential Districts

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

- A. In a residential district, an accessory building may be located no closer to a side lot line than six (6) feet and no closer to the front lot line than the minimum front yard for a principal building.
- B. If an interior lot abuts a corner lot or an alley separating them and the front yards of the two lots are perpendicular to each other, an accessory building on the rear lot line of the corner lot may be located no closer to the street abutting the interior lot than the principal building on the interior lot.
- C. Shall not exceed a height of 16'.

CH14 5 .7 - Setbacks: Vision Clearance at Intersections

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

At the street intersection of each corner lot, the triangular space determined by the two lot lines at that corner and by a diagonal line connecting the two points on those lot lines that are twenty-five (25) feet respectively from the corner shall be kept free of any obstruction to vision between the heights of two and one-half (2 2) and twelve (12) feet above the established grade.

CH14 5 .8 - Setbacks: Uses Allowed As Special Uses

Amendments and Repeals

When permitted by grant of special use per Section 8.3, the following uses are subject to the special setbacks prescribed, in feet, by the following table. If no figure appears for a front yard setback, the standard setback prescribed by Subsection 5.6 applies.

Setbacks in Feet by Use

Use Front Side Rear

Bottled gas storage and distribution 300' 300' 300'

Cemetery or crematory 50' 50' --

Clinic -- 10' 30'

Commercial facilities for raising &
breeding nonfarm fowl & animals 100' 100' 100'

Junk Yard 300' 150' 150'

Kindergarten or day care center 20' 15' --

Liquid fertilizer storage &
distribution 300' 300' 300'

Mineral extraction, borrow pit or
top soil removal and their
storage areas 150' 150' 150'

Outdoor theater 100' 40' 40'

Outdoor commercial recreational
enterprise 40' 40' --

Penal or correctional institution 100' 100' 100'

Petroleum tank farm 300' 300' 300'

Private recreational development 40' 40' --

Private camp or campground 100' 40' 40'

Public or commercial sanitary fill,
refuse dump, garbage disposal,
plant or trash transfer center 300' 300' 300'

Public or commercial sewage
disposal plant 300' 300' 300'

Riding Stable 100' 100' 100'

Sales barn for livestock sale 300' 300' 300'

CH14 5.9 - Buffering: Minimum Distances from Residential District

Sections of this ordinance have since been Amended By - 5-2015

A. A mineral extraction area, borrow pit, or topsoil removal area (including storage area), penal or correctional institution, public or commercial sewage disposal plant, sales barn for livestock sale, truck terminal, or wholesale produce terminal may not be located closer to an R1, R2, or R3, District than three hundred (300) feet. A junk yard may not be located closer to such a district than thirteen hundred twenty (1320) feet.

B. A parking area or loading berth for any of the following uses may not be located closer to a residential district than the distance, in feet, listed opposite it in the following table:

C.

Minimum Distance in Feet From a Residential District

Loading Parking

Use Area Berth

Airport 25' 100'

Commercial facilities for raising &
breeding nonfarm fowl & animals 25' 100'

Commercial greenhouse -- 50'

Junk yard 1320' 1320'

Mineral extraction, borrow pit, or topsoil removal and their storage areas -- 300'

Outdoor commercial recreational enterprise 25' 50'

Penal or correctional institution 300' 300'

Private recreational development 25' --

Sales barn for livestock sale 50' 100'

Truck terminal 100' 100'

Wholesale produce terminal 100' 100'

CH14 5 .10 - Buffering: Fences and Walls

Amendments and Repeals

Sections of this ordinance have since been Amended By - 5-2015

The following uses shall be fenced or walled as respectively prescribed by the following table:

Use Category Enclosure

Airport or heliport

(where located at ground level) 6'0" chain link fence

Artificial lake of three or more acres,
if accessible to public 6'0" chain link fence
Drive-in 6'0" wire mesh fence
Kindergarten or day-care center
(play area only) 4'0" wire mesh fence
Junk Yard 8'0" solid wall or solid painted fence sufficient to hide from view
Mineral extraction, borrow pit, topsoil removal, and their storage areas 6'0" chain link fence
Outdoor commercial recreational enterprise 6'0" chain link fence
Outdoor theater 8'0" solid opaque fence
Private swimming pool 6'0" chain link fence
Public or commercial sewage disposal plant 6'0" solid painted fence
Wholesale produce terminal 6'0" wire mesh fence

CH14 5 .11 - Buffering: Screen planting Abutting Residential Use

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

Tight screen planting, effective at all times to block the view from abutting residential uses, shall be provided for the following uses in accordance with the following table, the dimensions of the screen to be the minimum five years after the use is established.

Screening of Uses

Use Screen

Artificial lake of three acres or more 6'0" high; 3'0" wide
Commercial facilities for raising and
breeding nonfarm fowl and animals 6'0" high; 3'0" wide
Mineral extraction, borrow pit, topsoil
removal, and their storage areas 8'0" high; 3'0" wide
Private recreational development 6'0" high; 3'0" wide
Private swimming pool enclosed by a 6" fence or
6" vertical enclosure integral with an above
ground pool. Ord. No. 8-2000, passed 6/15/00 6"0" high; 3"0" wide
Public or commercial sanitary fill,
refuse dump, garbage disposal,
plant or trash transfer station 8'0" high; 6'0" wide
Riding stable 6'0" high; 3'0" wide
Truck terminal 6'0" high; 6'0" wide
Wholesale produce terminal 6'0" high; 6'0" wide

CH14 5 .12 - Entrances

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

A. This subsection limits the number of entrances to an arterial street or a state or federal highway.

However, it does not apply to entrances for emergency use only.

B. Each of the following uses, for which special uses are prescribed by Section 4.1, is limited to one entrance:

Use List

Artificial lake of three or more acres

Clinic

Commercial facility for raising and breeding
nonfarm fowl and animals

Country club or golf course

Junk yard

Mineral extraction, borrow pit, topsoil removal,
and their storage areas

Outdoor theater

Penal or correctional institution

Private recreational development

Private camp or campground

Public or commercial sanitary fill, refuse dump,
garbage disposal plant or trash transfer station Public or commercial sewage disposal plant

Railroad right-of-way and uses essential to
railroad operation

Riding stable

Sales barn for livestock sale

Telephone exchange or public utility substation

Tourist home or bed and breakfast

Truck terminal

Wholesale produce terminal

C. Each of the following uses, for which special uses are prescribed by Section 4.1, is limited to two entrances:

Use List

Airport

Cemetery

Outdoor commercial recreational enterprise

CH14 5 .13 - Minimum Off-Street Parking and Loading Requirements

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

SEE NEW ORDINANCES IN AMENDMENT BOX.

CH14 5 .14 - Signs

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

SEE NEW ORDINANCES IN AMENDMENT BOX.

CH14 5 .15 - Restrictions Along Streams

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

- A. The following buildings and structures are the only ones that may be erected within a floodway fringe: recreational apparatus and unenclosed shelters; parking spaces, detached unenclosed carports and the driveways serving them; water wells and fountains, and transmission lines for water, sewer, gas, oil, electric, telephone and cable television; fences; mailboxes; bridges and public and private streets.
- B. When required by the Indiana Department of Natural Resources, the buildings and structures listed in subsection A. above may be erected within a regulatory floodway only if a permit to construct in a floodway has been issued.
- C. Water wells, water lines and sewage facilities located within a flood plain shall be constructed to eliminate contamination of or by floodwater.

CH14 5 .16 - Water Pollution

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

No authorization of a use under this Ordinance includes the authority to discharge liquid or solid wastes into public waters except as permitted under the Stream Pollution Control Law (Acts of 1943, Chapter 214, as amended). Plans and specifications for proposed sewage and other waste treatment and disposal facilities must be approved by the Indiana Department of Environmental Management and/or the State Board of Health, and any other Indiana department or agency authorized to review and approve such facilities.

CH14 5 .17 - Industrial Restrictions

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

SEE NEW ORDINANCES IN AMENDMENT BOX.

CH14 6 .1 - Planned Developments

Amendments and Repeals

Sections of this ordinance have since been Amended By - [5-2015](#)

SEE NEW ORDINANCES IN THE AMENDMENT BOX.

CH14 7 .0 - Design Review Committee

Preface

The purpose of this section is to provide a framework for the establishment of a technical committee to assist the plan commission with those decisions it must make in regard to community appearance, architectural character, landscape characteristics, site planning, and historic preservation.

This section provides for the committee's membership, its jurisdiction both geographically and in regard to subject matter, the purpose of the committee, and how its responsibilities under the zoning ordinance are to be coordinated with its responsibilities under the subdivision of regulations.

In most communities the matters of community appearance and character have come to be of increasing public concern. This is because all aspects of the physical environment are closely related to the economic success, livability, and overall wellbeing achieved in the towns, cities and the populated countryside.

CH14 7 .1 - Membership and Jurisdiction

A). Membership.

The Design Review Committee (hereinafter referred to as the "Review Committee") shall consist of and continue as a five member panel appointed as follows:

One (1) ex-officio member of the Lapel Plan Commission appointed from among its members to serve as liaison between the Review Committee and the Plan Commission as well as serving as a fully participating member of the Review Committee.

Four (4) citizen members appointed by the Town Council who may not be members of the Plan Commission. These citizen members must, insofar as possible, possess the following professional qualifications:

- i. They must hold a college level academic degree in architecture, landscape architecture, art history, city planning, historic preservation, history, urban design or urban planning or have had an equivalent combination of education and experience in dealing with the historic and/or visual aspects of the natural and built environments.
- ii. They must possess a sensitive and keen interest in the protection and enhancement of the natural and built environments.

B). Terms of Office.

The initial five members shall be appointed for terms of four (4), three (3), two (2), one (1) and one (1) year, respectively. Thereafter each successive member shall be appointed for four (4) years. The staggering of terms is intended for the purpose of giving the Review Committee continuity in its recommendations to the Commission.

C). Territorial Jurisdiction.

The Review Committee shall have a jurisdiction which is coterminous with that of the other sections of this Ordinance.

D). Subject Matter Jurisdiction.

The Review Committee shall have advisory authority only, and shall under this ordinance make recommendations 1) to the Administrator and the Plan Commission as a checkpoint agency for the review of planned developments, 2) to the Administrator regarding parking and landscaping plans filed with those for single family homes, and 3) to the Administrator regarding all aspects of design for improvement location permits filed for property located within the Historic Preservation District as defined and mapped in the adopted Comprehensive Plan.

E). Purpose.

The purpose of the Review Committee is to provide professional and technical advice to the Administrator and the Plan Commission in the administration of this Ordinance as specified elsewhere in this Ordinance.

F). Coordination with the Zoning Ordinance/Subdivision Regulations.

This Review Committee is established both under the Subdivision Ordinance and the Zoning Ordinance to serve the differing needs of these two ordinances. It shall be made up of the exact same members under both ordinances in order to facilitate coordination of the decision-making with respect to the design review aspects of these ordinances.

CH14 8 .0 - Board of Zoning Appeals, Variances, Special Uses and Appeals

Preface

The purpose of this section is to explain the makeup of, jurisdiction of and procedures to be used by this Board. Subsection 8.1 describes the Board's membership, terms of office, area of jurisdiction and statutory basis. It also explains the Board's relationship to staff support. Subsection 8.2 sets forth the rules and procedures under which the Board shall function. Subsection 8.3 specifies how the Board must deal with requests for special uses. These are uses which may be permitted if they can meet restrictions and conditions in addition to those required under other provisions of the ordinance for the district in which they are to be located. The primary use table found in Section 4 establishes those uses which can be permitted in which specific districts through the grant of special use permits. Subsection 8.4 deals with the manner in which the Board may permit variances (deviations) from the strict interpretation of the ordinance in cases where a non-economic hardship exists with respect to a condition peculiar to a particular piece of property and not the result of any act of the owner. Subsection 8.5 describes the procedures for appealing decisions of the Board.

NOTE: Use variances are permitted by the State

Statute for Advisory Boards of Zoning Appeals, but permitting them is not recommended by this author. Use variances have virtually the same effect as rezoning but without benefit of legislative action. Permitting the Board to have this authority usurps the role of city and town councils and boards of county commissioners to regulate land use and leads to the destruction of the homogeneity of zoning districts and their property values. In most states such a delegation of legislative authority to an appointed board is unconstitutional.

CH14 8 .1 - Boards of Zoning Appeals: Membership and Jurisdiction

The Board. There is hereby reestablished the Advisory Board of Zoning Appeals to be known as the ADVISORY BOARD OF ZONING APPEALS OF THE TOWN OF LAPEL,

INDIANA. The Advisory Board of Zoning Appeals shall be a continuation of the present Board of zoning Appeals of the Town of Lapel heretofore established under the advisory plan law, being Indiana Code [36-7-5-900](#), as added by Acts 1981, PL. 309 '23.

A. Membership. The Advisory Board of Zoning Appeals shall consist of and continue as a five member board appointed as follows:

Four (4) citizen members appointed by the Town Council of the Town of Lapel, of whom one (1) must be a member of the Advisory Plan Commission and three (3) must not be members of the Advisory Plan Commission.

One (1) citizen member appointed by the Advisory Plan Commission who must be a member of the Advisory Plan Commission other than the member appointed by the Town Council of the Town of Lapel.

B. Terms of Office. Following adoption of this Ordinance, each of the above members shall be reappointed for the balance of the term being served on the present Advisory Board of Zoning Appeals of the Town of Lapel. Thereafter each member, except those appointed from the Advisory Plan Commission shall be for a term of four (4) years. The members appointed from the Advisory Plan Commission shall be for a term of one year. Each term shall expire on the first Monday of the year of termination.

C. Territorial Jurisdiction. The Advisory Board of Zoning Appeals shall have jurisdiction over all the land subject to the zoning ordinance.

D. Subject Matter Jurisdiction. The Advisory Board of Zoning Appeals shall have exclusive jurisdiction for (1) variances under the statute and this ordinance except it shall have no jurisdiction to grant a variance from a use district or classification; (2) special uses; (3) appeals as provided by statute, including requirements for procurement of improvement location or occupancy permits or any ordinance adopted under Indiana Code [36-7-4](#) or any prior zoning statute, and any other appeals authorized by statute.

E. Staff. The Staff of the Advisory Board of Zoning Appeals shall consist of the Administrator as defined in this ordinance and such other persons employed by the Town of Lapel as he may direct from time to time to assist him or the Advisory Board of Zoning Appeals.

CH14 8 .2 - Board of Zoning Appeals: Rules and Procedures

A. Rules and By-Laws. The Advisory Board of Zoning Appeals shall have sole authority to adopt any and all rules under Indiana Code [36-7-5-916](#) and any and all by-laws concerning organization, selection of officers, forms for applications, filing requirements, other than as to place of filing as herein provided for, procedures, notices for conduct of meetings. Upon adoption of such rules and by-laws they shall be applicable to the Advisory Board of Zoning Appeals. A change of zoning request may be submitted if more than one legally described parcel of real estate is effected by that request. Such modification of zoning request must be in accordance with the procedure as set forth in this section.

B. Facilities and Funding. The Town of Lapel shall provide suitable facilities for the holding of Advisory Board of Zoning Appeals hearings and the storage of its recorded documents and accounts, and in its annual budget to provide sufficient funds for the functioning of said Board and its staff.

C. Filing. All applications for variances, special uses, and requests for appeal shall be filed by the applicant with the staff of the Advisory Board of Zoning Appeals.

D. Hearings. All hearings required for variances, special uses, and appeals shall be by the Advisory Board of Zoning Appeals. As per section 8.2 (a), procedures for public notice setting forth time and place for all hearings by the Advisory Board of Zoning Appeals shall be established by the Advisory Board of Zoning Appeals.

8.2a The following will be required in order to submit an application for change of zoning:

- A. A change of zoning request may be submitted if more than one legally described parcel of real estate is effected by that request. Such modification of zoning request must be in accordance with the procedures as set forth in this section.
- B. Upon receipt of an application for a zoning classification modification, that application shall be referred to the advisory planning commission for investigation as to the manner in which the proposed modification and the character of the proposed modification will effect the comprehensive plan of the town of Lapel. The planning commission shall report the results of its investigation to the town board within 45 days following the receipt of the application. If no such report has been filed with the town board, the board may proceed to process the application.
- C. The board shall then proceed with a hearing on the application. That hearing shall be conducted at its regular monthly town board meeting. Notification of that hearing will be by publication pursuant to Indiana Code [5-3-1](#) and as per Sec. 8.2 (E) as required in the rules of procedure for the Board of Zoning Appeals. Following the hearing, and on an affirmative finding by the board that:
 - 1. The proposed zoning modification is located in a district where such use may be permitted and in appropriate,
 - 2. The requirement set forth in this section, for the zoning modification, have been met,
 - 3. The zoning modification is consistent with the spirit, purpose, and intent of the zoning code; will not substantially and permanently injure the appropriate use of the neighborhood property; and will serve the public convenience and welfare.
- D. The town board shall approve or deny the zoning modification pursuant to the application of Sec. C.
- E. In addition to the notice requirements of Sec. 8.2 (A) there will a required posting of a sign, giving notice of any hearing on special uses, variances, or zoning changes, placed on the parcel of real estate. Notice shall be posted, by the Town of Lapel, at least 15 days before any such hearing conducted by the Board of Zoning Appeals, planning commission, or town board, where such an application for variance, special use, or zoning change will occur.

CH14 8 .3 - Special Uses

- A. There shall be no classes of cases or application therefor, nor any particular situation in which this Ordinance authorizes either special exceptions, contingent uses or conditional uses.
- B. The Advisory Board may approve a special use in a district if, after a hearing under section 8.2 (d), it makes findings of fact in writing, that:
 - i. section 4.1 authorizes that special use in that district; and
 - ii. the requirements and development standards for the requested special use as prescribed by this Ordinance will be met; and

- iii. granting the special use will not subvert the general purposes served by this Ordinance and will not, because of traffic generation, placement of outdoor lighting, noise production or hours of operation, materially and permanently injure other property or uses in the same zoning district and vicinity.
- C. The Advisory Board may impose such reasonable conditions upon its approval as it deems necessary to find that (b) (3) above will be served.
- D. The Advisory Board may permit or require the owner of the parcel of property to make a written commitment concerning the use or development of the parcel as specified under Indiana Code [36-7-5-921](#).
- E. The approval of a special use under subsection (B) is unnecessary for a use authorized by section 4.1 if that use existed on the date this Ordinance, or pertinent amendments to it, were passed. However, this subsection shall not authorize the expansion of such a use if it involves the enlargement of a building, structure, or land area.
- F. A special use approved by the Advisory Board may not be expanded, extended, or enlarged unless reapproved by the Advisory Board under the procedures set forth in this Ordinance for approving a special use.
- G. A special use, approved under subsection (B) or authorized by subsection (E) ceases to be authorized and is void if that use is not established within a twelvemonth period of the date the special use was approved, or if that special use is discontinued at that site for a twelve-month period during which time it is not succeeded by the same specifically approved special use.
- H. A special use may be terminated by the Advisory Board of Zoning Appeals, upon filing of an application therefore by an interested person or the Administrator, and upon a finding at a public hearing, with notice to the property owner, that the terms of this Ordinance, or conditions of approval or commitments have not been complied with.

For a special use to be eligible for a public hearing by the Advisory Board under this section, an applicant must first receive a determination from the Administrator that a special use is required for the intended use or for the expansion, extension, or enlargement of a use under (F) above. The Administrator shall file a report of determination (in a form prescribed by the Advisory Board) with the Plan Commission which body shall determine how the granting of the special use would affect the purposes served by this Ordinance in furtherance of the Comprehensive Plan. Within thirty (30) days of the date on which it received the application, the Commission shall report its determination to the Advisory Board, for action by it as authorized by subsection (B). If the Advisory Board grants the special use, it shall direct the applicant to apply for an improvement location permit under section 9.1. If such application complies with this ordinance and all other applicable codes and ordinances, the Administrator shall issue the improvement location permit for the approved special use.

CH14 8 .4 - Variances

- A. The Advisory Board may grant a variance from the development standards (such as height, bulk, area) of the zoning ordinance if, after a public hearing, it makes findings of fact in writing, that:

- i. the Advisory Plan Commission has determined that the variance application is not for a use variance, i.e. a variance from a use district or classification per Section 8.1 (D); and
 - ii. the approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
 - iii. the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - iv. the strict application of the terms of this Ordinance (a) is being applied to some condition peculiar to the property involved that is not common to other properties in the same zoning district; and (b) will result in an unusual and unnecessary hardship. This situation shall not be solely self-imposed, nor be based on a perceived reduction of or restriction on economic gain.
- B. The Advisory Board may permit or require the owner of a parcel of property to make written commitment concerning the use or development of that parcel or may impose conditions upon that grant of variance.
- C. A variance granted by The Advisory Board shall run with the land until such time as: (1) the use of the variance ends, or (2) the property conforms with the Ordinance as written.
- D. Where an owner has failed to comply with any condition and/or commitment permitted or required by the grant of variance, the Advisory Board may authorize such action as it may deem appropriate to obtain compliance by the owner with the condition or commitment of the grant, or with the terms of this Ordinance in the same manner as if the variance had not been granted.

CH14 8 .5 - Appeals

- A. A decision of the Administrator enforcing this Ordinance may be appealed to the Advisory Board of Zoning Appeals by any person who is adversely affected by the decision.
- B. On an appeal under subsection (A), the Advisory Board of Zoning Appeals may make any decision that the Administrator might have made.
- C. All appeals from a decision of the Advisory Board of Zoning Appeals shall be made pursuant to Ind. Code 36-7-5-1001 through 36-7-5-1020. The person aggrieved by a decision of such Board of Zoning Appeals shall present the petition provided for in Ind. Code 36-7-5-1003 to the Court within thirty (30) days after the entry of the decision of the Board of Zoning Appeals.

CH14 9 .0 - Improvement Location Permits

Preface

The purpose of this section is to describe the process for obtaining improvement location permits and the conditions which have to be met in order to obtain them. It also deals with occupancy permits. The issuance of such permits is absolutely critical for the implementation of a zoning ordinance with respect to both temporary and permanent improvements to structures, buildings, and land.

Subsection 9.1 explains the applicability of this permit system: the circumstances under which they must be obtained. Subsection 9.2 deals similarly with occupancy permits. Subsection 9.3 explains what drawings and

related information must be submitted as part of the permit process. Subsection 9.4 deals with the special provisions concerning industrial uses which must obtain a compliance certificate showing that the zoning ordinance performance standards are being met. Subsection 9.5 deals with the special provisions for mobile homes. Subsections 9.6 through 9.9 explain what records must be kept, the length of time for reviewing applications, procedures for issuance or denial, how appeals may be made, and when improvement location permits expire.

CH14 9 .1 - Applicability

- A. No special use may be approved under section 8.3, no change in an FP District may be made under section 3.3, and no other change in the use of land (except an agricultural use) that involves a change in any structure on or in any land, or in the condition of the land, may be made unless the Administrator on application, issues an improvement location permit authorizing the change.
- B. The filing fees for improvement location permits shall be as shown in the table at the end of this section.

CH14 9 .2 - Certificate of Occupancy

- A. No application for an improvement location permit under section 9.1 may be considered unless the applicant has also applied for a certificate of occupancy.
- B. No land or structure with respect to which a permit has been issued under section 9.1 may be used for the purpose contemplated by the permit unless the Administrator, after the change is completed, issues a certificate of occupancy stating that the change complies with this ordinance and with the permit.
- C. Within ten days after the completion of the change authorized by the improvement location permit, the Administrator or his designee shall inspect the premises and, if the change conforms to this ordinance and the improvement location permit, and a certificate of compliance, if required by section 9.4, has been obtained, he shall issue a certificate of occupancy.
- D. If an applicant fails to obtain an Improvement Location Permit, shall fail to receive the issuance of a Certificate of Occupancy, as referred to in Paragraph 9.2 (C), the applicant shall be fined an amount of \$50.00 per day for each day that the premises is occupied in violation of the requisite Certificate of Occupancy." Ord. No. 10-1999, passed 11/18/1999

CH14 9 .3 - Site Plan and Construction Drawings

- A. In addition to all other required applications, information and permits from other governmental agencies, a person who applies for an improvement location permit under section 9.1 must furnish the Administrator with plans drawn to scale showing:
 - i. the location and legal description of the land concerned;
 - ii. the location and size of all buildings and structures already on the land and those to be erected, including parking, signage, landscaping, and screening;
 - iii. the size of all entrances to and exits from the land, including all adjacent streets and highways;
 - iv. detailed drawings showing all construction and materials; and
 - v. elevations of all buildings to be constructed.

vi. Plans so furnished shall be kept by the Administrative Officer as permanent records.

B. As a condition of issuing a permit, the Administrator may require changes to the landscape plan upon recommendation of the Design Review Committee, the relocation of any structures or buildings, or of any entrance or exit, or the inclusion of entrances or exits not shown on the plan, or the deletion of any entrance or exit, if the requirement is necessary in the interest of the public welfare or to an appropriate balancing of the interests of persons in the district and vicinity concerned.

CH14 9 .4 - Industrial Uses: Certificate of Compliance

If an application for an improvement location permit relates to an industrial use, it must be accompanied by a certificate of compliance, certified by a registered professional engineer of the state, stating that the use will meet the performance standards of the district concerned. After ten working days have elapsed during which the Administrator has not required additional information or objected in writing, he shall issue the permit.

CH14 9 .5 - Mobile Homes

- A. Mobile homes shall be permitted as temporary uses only, subject to section 4.1 and the Primary Use Table and this section.
- B. In the event that a single family home has been destroyed by fire, explosion, act of God, or the public enemy and an improvement location permit has been issued for its replacement or reconstruction, the property owner may make application for an improvement location permit for a mobile home to be placed on the same property for a period not to exceed one (1) year. No extensions of time shall be permitted by the Administrator.
- C. Application procedures and requirements shall be the same as for any other improvement location permit.
- D. Placement of the mobile home shall be subject to all use requirements and restrictions applicable to a single family home.
- E. In addition to all other requirements, the property owner shall post a one thousand dollar (\$1,000.00) cash bond in favor of the Town of Lapel to be held by the Town Clerk. Said cash bond shall be returned without interest upon removal of the mobile home and the issuance of a certificate of occupancy for the constructed or reconstructed single family home. Said cash bond may be drawn on by the Council of the Town of Lapel, at the Commission's discretion upon the advice of the Administrator, that the property owner has failed to remove the mobile home either at the end of one (1) year or within one (1) week of the issuance of the certificate of occupancy for the constructed or reconstructed single family home, whichever occurs first. Said cash bond may be used to defray expenses incurred by the Town for the removal of the mobile home and/or legal costs directly associated with the enforcement of this ordinance.
- F. Section 9.5 is not intended nor should it be construed to limit the damages, legal or equitable, that the Town of Lapel may seek in the enforcement of this ordinance, nor should section 9.5 be construed as authorizing any violation of this ordinance and/or the subdivision ordinance and the designated uses of respective parcels of real estate.

CH14 9 .6 - Records

A record of each improvement location permit and each certificate of occupancy shall be kept by the Administrator. Upon request, a copy shall be furnished to any person having a proprietary or possessory interest in the premises concerned.

CH14 9 .7 - Issuance or Denial

The Administrator shall accept only a complete application and issue the improvement location permit or deny the application together with a statement of reasons for the denial within a period of eight working days following its submittal, except for the longer period of time required for industrial uses as provided in section 9.4

CH14 9 .8 - Appeals

A decision of the Administrator under section 9.7 may be appealed to the Advisory Board of Zoning Appeals subject to the provisions of Section 8.5

CH14 9 .9 - Expiration

An improvement location permit shall be valid for a period of one (1) year at which time it shall expire, unless work authorized by the improvement location permit is proceeding and inspections have been made by an official Town Inspector in which case it shall remain in full force and effect.

CH14 9 .10 - Failure to Obtain Permit/Violation of Building Code

If an improvement location permit, as required in this section, is not obtained, the Town building inspector shall have authority to issue a stop work order on all work being performed. Such stop work orders shall be withdrawn upon the proper permit being obtained. Any improvement being deemed by the Towns building inspector as not in compliance with building codes or Town Ordinances shall be subject to the issuance of a stop-work order. Such stop-work order shall be withdrawn upon compliance. The Town of Lapel shall retain all civil remedies available by statute, for the failure to obtain a permit pursuant to this section.

Further Information

Ord. 5-1998, passed

Date Passed: 6/18/1998

CH14 10 .1 - Planning Commission

The Plan Commission is hereby reestablished. The Commission shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this section. Meetings shall be held at the call of the chairman and at such other times as the Commission may determine. All meetings shall be open to the public. The Commission 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 keep records of its examination and other official actions, all of which shall be a public record and be immediately filed in the office of the Commission.

For the purpose of this section the Commission shall have the following duties:

- A. Review all proposed amendments to their section and make recommendations to the Town Board.
- B. Review all proposed subdivisions and plat dedications.
- C. Authorize the issuance of a building permit for planned unit developments or mobile home park that is consistent with the intent of their section.

CH14 11.1 - Permit Fee Schedule

All applications filed with the Town of Lapel shall be accompanied by a fee in accordance with the schedules contained herein. All work done under any permit shall be in full compliance with all other ordinances pertaining thereto, and in addition to the fees for permits, there shall be paid the fees prescribed in such ordinances.

CH14 11.2 - Permits

All construction done by the Town is required to follow the procedures and obtain appropriate permits, but at no cost for the fee.

CH14 11.3 - Fees

Amendments and Repeals

Sections of this ordinance have since been Amended By - [4-2009](#) [5-2010](#) [5-2015](#) [1-2017](#)

All applications filed with the Town of Lapel shall be accompanied by a fee in accordance with the schedules contained herein. All work done under any permit shall be in full compliance with all other ordinances pertaining thereto, and in addition to the fees for permits, there shall be paid the fees prescribed in such ordinances.

Planning and Zoning Fees

- A. Annexation - \$250 plus \$10 per acre
- B. Annexation with Zoning - \$400 plus \$10 per acre
- C. Zoning Ordinance Amendment
 - 1. Text only - \$250.
 - 2. Map & text - \$250 plus \$10 per acre
- D. Concept Plan*
 - 1. Single & 2 family dwellings \$500 plus \$60 per lot

- 2. Multi-family \$500 plus \$50 per unit
- 3. Business, Commercial, Industrial \$500 plus \$25 per acre
- 4. *applicant is responsible for all costs required for public notice

E. Plat and construction plans**

- 1. Single & 2 family dwellings \$500 plus \$60 per lot
- 2. Multi-family \$500 plus \$75 per unit
- 3. Business, Commercial, Industrial \$500 plus \$50 per acre
- 4. ** applicant is responsible for all recording fees

F. Amendments to a recorded plat – Fees are required in accordance with the classifications in item E above, for the area affected, as determined by the Plan Commission.

G. Additional fees will be charged for additional reviews beyond the first 2 reviews when the applicant does not make the revisions requested in the original review. Each review after the initial 2 reviews will be charged in accordance with the schedule and classifications above.

H. Improvement location permits \$.15 per square foot of lot area but not less than \$500

CH14 11.4 - Variances - Board of Zoning Appeals

Amendments and Repeals

Sections of this ordinance have since been Amended By - [4-2009](#) [5-2010](#) [5-2015](#) [1-2017](#)

- A. Zoning development \$150 plus \$50 for each additional variance
- B. Use variance - \$250
- C. Non-conforming use determination - \$50
- D. Appeals - No fee but petitioner pays for public notice
- E. Special use - \$50

CH14 11.5 - Variances - Plan Commission

Amendments and Repeals

Sections of this ordinance have since been Amended By - [4-2009](#) [5-2010](#) [5-2015](#) [1-2017](#)

- A. Sub-division Control - \$250

CH14 11.6 - Building Permits

Amendments and Repeals

Sections of this ordinance have since been Amended By - [4-2009](#) [5-2010](#) [5-2015](#) [1-2017](#)

- A. Single and 2 family dwellings - \$150 plus \$.067 per square foot
- B. Multi-family - \$250 plus \$.20 per square foot
- C. Commercial, Industrial - \$250 plus \$.10 per square foot
- D. Additions of 1 or 2 rooms - 75% of fees listed above
- E. Additions of 3 or more rooms - 100% of fees listed above
- F. Remodeling
 - A. Roof - \$35
 - B. Electrical - \$35 plus \$.01 per square foot
 - C. Plumbing - \$35 plus \$.01 per square foot
 - D. Structural - \$100 plus \$.03 per square foot
 - E. HVAC - \$35 plus \$.01 per square foot
 - F. Combination - \$75 plus \$.03 per square foot
- G. Accessory structures
 - A. buildings - \$50 plus \$.06 per square foot
 - B. pools - \$100 plus \$.01 per square foot
 - C. decks - \$35 plus \$.01 per square foot
 - D. fences - \$45
- H. Demolition - \$50
- I. Moving structure - \$100 plus traffic safety costs
- J. Certificate of Occupancy
 - A. Single and 2 family - \$50
 - B. Multifamily - \$100
 - C. Commercial/Industrial - \$100
- K. Temporary uses - \$50
- L. Additional inspection required because of incomplete work will be assessed \$35 per inspection trip payable in advance.

CH14 11.7 - Sign Permits

Amendments and Repeals

Sections of this ordinance have since been Amended By - [4-2009](#) [5-2010](#) [5-2015](#) [1-2017](#)

- A. Signs \$25 per sign plus \$1 per square foot over 16 square feet.

CH14 11.8 - Filing Fee Penalty

Any person or persons, firm, or corporation who shall initiate construction prior to obtaining a permit of any type set forth in this section shall pay double the amount in the schedule.

CH14 11.9 - Payment

All fees shall be payable to the Town of Lapel at the office of the Clerk Treasurer and shall be deposited according to the procedures established by the Town Council of

Lapel, Indiana.

(Ord. 7-2004, passed 9/2/2004)

All other terms and requirements of Ordinance No. 8, 1995, remain in full force and effect.

(Ord. No. 1-1995, passed 2/21/95)(Ord. 8-1995, passed 9/19/95)(Ord. No. 7, 1997, passed 8/19/97)(Ord. No. 8, 1998, passed 8/20/98)

CH14 12 .0 - Building Rules

The following building rules of the Indiana Fire Prevention and Building Safety Commission, of the Indiana Administrative Code, as set out in the following articles, are hereby incorporated and adopted to all Town of Lapel building codes, requirements, and ordinance as of the date of the execution of this ordinance:

Article 13

- Building Codes
 - a. Fire and Building Safety Standards
 - b. Indiana Building Codes
 - c. Indiana Building Code Standards
 - d. Indiana Handicapped Accessibility Code

Article 14

- One & Two Family Dwelling Code
- Indiana One and Two Family Dwelling Code

Article 16

- Plumbing Code
- Indiana Plumbing Code

Article 17

- Electrical Code
 - a. Indiana Electrical Code
 - b. Safety Code for Health Care Facilities

Article 18

- Mechanical Code

- Indiana Mechanical Code

Article 19

- Energy Conservation Code
 - a. Indiana Energy Conservation Code
 - b. Modifications to the Model Energy Code

Article 20

- Swimming Pool Code
- Indiana Swimming Pool Code