

## **ARTICLE 4. ZONING.**

### **Division I. Zoning Ordinance.**

#### **Sec. 10-119 Schedule of Fees.**

The following schedule of fees shall apply:

Certificate of Zoning Compliance:

Residential \$10.00

Commercial \$25.00

Maps:

Zoning \$5.00

Streets \$5.00

Soils \$5.00

Land Use \$5.00

TIF District \$5.00

Wards \$5.00

Subdivision Control Ordinance \$50.00

Book of Standards \$50.00

Comprehensive Plan \$50.00

Development Related Fees:

Plan Commission:

Rezoning Fee \$200.00

Special Meetings requested by a Petitioner \$400.00

Public hearing signs shall be purchased by a petitioner from the town at a cost of \$25.00 and shall be posted on the property that is the subject of a given public hearing before either the Plan Commission or Board of Zoning Appeals in accordance with the Rules and Regulations of both bodies.

SUD Development Review:

Residential additions/remodels \$50.00

Commercial See below

1. Single Developer Site Plan Review

a. Minimum Fee - per acre \$250.00

2. Preliminary Site Development Review

a. Minimum Fee - per lot \$300.00

3. Preliminary Architectural Plans and Materials Review

a. Minimum Fee - per building \$500.00

4. Final Site, Architectural and Material - Construction Documents Review

a. Minimum Fee - per building

i. From 1 - 5,000 sq. ft. \$1,000.00

ii. From 5,001 - 10,000 sq. ft. \$1,800.00

iii. For every 10,000 sq. ft. over 10,001 sq. ft. \$500.00

5. Sign(s) Review

a. Minimum Fee - per building \$300.00

6. Residential (under 3 units) Review for new construction

a. Minimum Fee - per building \$300.00

7. Re-submission from Denial

a. Minimum Fee \$250.00

Preparation of written review, meetings and travel will be calculated at an hourly rate of \$75.00 per hour.

Minimum fee, paid by petitioner, will be used for the preparation of a written review, meeting time and travel. If a petitioner's submission requires additional time for meetings and/or travel, additional fees will be calculated at an hourly rate of \$75.00 per hour.

Non-SUD Commercial Site Plan Review \$1,000.00

Subdivision Fees:

Pre-application Fee:

10 lots \$500.00

10 lots \$1,000.00

Engineering Review Fee for Residential Developments (application fee):

10 lots \$450.00 per lot

11-25 lots \$350.00 per lot

26-39 lots \$300.00 per lot

40 lots \$250.00 per lot

Engineering Review Fee for Commercial/Industrial Developments:

2% of the costs of site improvements whether such improvements are public or private. This does not include the building(s).

Subdivision Inspection Fee:

2% of total approved cost of construction or installation of improvements whether such improvements are public or private.

Maintenance letter of credit:

10% of total cost of improvements

Cleaning and televising of sanitary and storm lines - All costs will be based on actual time and material

using the rates below.

<u>Piece of Equipment</u>	<u>Cost Per Hour</u>
Operator with Experience*	\$ 26.00
Camera Van	\$ 75.00
Sewer Vactor/Rodder	\$140.00

\*Please note that it requires a minimum of three (3) operators to clean and/or televise any sanitary or storm line.

Board of Zoning Appeals Hearings:

Residential \$100.00

Commercial \$200.00

Special Meetings requested by a Petitioner \$400.00

Public hearing signs shall be purchased by a petitioner from the town at a cost of \$25.00 and shall be posted on the property that is the subject of a given public hearing before either the Plan Commission or Board of Zoning Appeals in accordance with the Rules and Regulations of both bodies.

In the event that the Engineering Review Fee (application fee), Site Plan Review Fee, SUD Commercial Development Fee and/or the Subdivision Inspection Fee does not cover the Town's actual costs of review or inspection, the Town may charge additional fees for these services based upon the actual costs incurred. In the event of an overpayment of any of these fees, a refund will be issued to the petitioner.

(Ord. No. 2007-33, 12-27-07; Am. Ord. No. 2016-02, 3-10-16)

## **Sec. 10-120 Definitions.**

For the purposes of this Ordinance, certain terms or words used herein shall be interpreted as follows:

The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word "shall" is mandatory, the word "may" is permissive.

The words "used" or "occupied" include the words "intended", "designed", or "arranged to be used or occupied".

a. **Accessory Building.** A detached subordinate building, the use of which is clearly incidental to the principal building and that is located on the same lot as the principal building. Examples of such accessory buildings are, but not necessarily limited to, cabanas, storage sheds, playhouses, and garages.

b. **Accessory Use of Structure.** A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

c. **Advertising Structure.** A freestanding structure the purpose of which is to inform or call attention to persons not on the premises on which the structure is located of a business, product, event, or service.

d. **Agricultural Use.** Agricultural uses include farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.

e. **Alley.** A minor way at the back or side of the property affording only secondary access to the property.

f. **Auto Burglar Alarm.** A tube that contains pyrotechnic composition that produces a loud whistle or smoke when ignited. A small quantity of explosive, not exceeding fifty (50) milligrams, may also be used to produce a small report. A squib is used to ignite the device.

g. **Basement.** That portion of any structure located partly below the average adjoining lot grade.

h. **Billboard.** A freestanding illuminated or non-illuminated structure advertising a business, product, or event not available on the premises where the structure is located, which billboard shall not contain advertising space in excess of three hundred (300) square feet per side, shall not exceed thirty five (35) feet in height, shall not be wider than twenty five (25) feet and shall have a minimum ground clearance of twelve (12) feet, supported by a single support pole.

i. **Booby Trap.** A small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.

j. **Buildable Area.** The portion of a lot after required yards have been provided.

k. **Building.** Any structure used, designated, or intended for the protection, shelter, enclosure or support of persons or property.

l. **Building, Height of.** The vertical distance from the average curb level in front of the lot or the finished grade at the building line, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the average height of the gable of a gambrel, hip, or pitch roof.

m. **Cabana.** An accessory building or a portion of the main building used as a bathhouse, pool house or a dressing area in connection with a swimming pool, tennis court, hot tub, sauna, etc.

n. **Chaser.** A device, containing fifty (50) milligrams or less of explosive composition, that consists of a small paper or cardboard tube that travels along the ground upon ignition. A whistling effect is often produced, and a small noise may be produced.

o. **Cigarette Load.** A small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one (1) of the pegs, a small report is produced.

p. **Consumer Firework.** A small firework that is designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing fifty (50) milligrams or less of explosive composition, and aerial devices containing one hundred thirty (130) milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect. **Consumer Fireworks** include:

1. Aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, roman candles, mines, and shells;

2. Ground audible devices, which include firecrackers, salutes, and chasers; and

3. Firework devices containing combinations of the effects described in subsections 1. and 2.

q. **Cone Fountain.** A cardboard or heavy paper cone which contains up to fifty (50) grams of pyrotechnic composition, and which produces the same effect as a cylindrical fountain.

r. **Cylindrical Fountain.** A cylindrical tube not exceeding three-quarters (3/4) inch in inside diameter and containing up to seventy-five (75) grams of pyrotechnic composition. Fountains produce a shower of color and sparks upon ignition, and

sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain), a wooden or plastic base to be placed on the ground (base fountain), or a wooden handle or cardboard handle for items designated to be hand held (handle fountain).

s. **Density.** Number of living units per acre allowable under the schedule of district regulations.

t. **Detached Structure.** A structure surrounded by an open space on the same lot.

u. **Dipped Stick or Wire Sparkler.** A stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition does not exceed one hundred (100) grams per item. Those devices containing chlorate or perchlorate salts do not exceed five (5) grams in total composition per item. Wire sparklers that contain no magnesium and that contain less than one hundred (100) grams of composition per item are not included in the category of consumer fireworks.

v. **Drive-In Restaurant or Refreshment Stand.** Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.

w. **Dwelling, Mobile Home.** A detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like. A travel trailer is not to be considered as a mobile home.

x. **Dwelling, Multiple-Family.** A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

y. **Dwelling, Single-Family.** A detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family only.

z. **Dwelling, Two-Family.** A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

aa. **Dwelling Unit.** One (1) room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent bath and sleeping facilities.

bb. **Explosive Composition.** A chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.

cc. **Family.** One (1) or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain over five (5) persons, but further, provided that domestic servants employed on the premises may be housed on the premises without being counted as a family or families.

dd. **Fence.** A structure erected around or along the side of any yard, field or other open space to prevent passage in or out of the enclosed area, including but not limited to a wall, a structure constructed of posts carrying boards, rails, pickets, or wire, or an iron structure consisting of vertical or horizontal bars.

ee. **Filling Station.** Buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where in addition the following services may be rendered and sales made, and no other:

1. Sale and servicing of spark plugs, batteries, and distributors and distributor parts.
2. Tire servicing and repair, but not recapping or regrooving.
3. Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like.
4. Radiator cleaning and flushing.
5. Washing and polishing, and sale of automotive washing and polishing materials.
6. Greasing and lubrication.
7. Providing and repairing fuel pumps, oil pumps, and lines.
8. Mirror servicing and repair of carburetors.
9. Emergency wiring repairs.
10. Adjusting and repairing brakes.
11. Minor motor adjustments not involving removal of the head or crankcase or racing the motor.
12. Sale of cold drinks, packaged foods, tobacco, and similar convenience goods for filling stations customers, as accessory and incidental to principal operation.

13. Provision of road maps and other informational material to customers; provision of restroom facilities.

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 operating 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.

ff. **Firecracker or Salute.** A device that consists of a small paper wrapped or cardboard tube containing not more than fifty (50) milligrams of pyrotechnic composition and that produces, upon ignition, noise, accompanied by a flash of light.

gg. **Firework.** Any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, items referenced in section 8(a) of this chapter, and special fireworks. The following items are excluded from the definition of fireworks:

1. Model rockets;
2. Toy pistol caps;
3. Emergency signal flares;
4. Matches;
5. Fixed ammunition for firearms;
6. Ammunition components intended for use in firearms, muzzle loading cannons, or small arms;
7. Shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms.

hh. **Flitter Sparkler.** A narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. These devices do not use a fuse for ignition, but rather are ignited by igniting the paper at one (1) end of the tube.

ii. **Floor Area.** Area in square feet of all floors in all buildings including elevators and stairways as measured from outside of exterior wall to outside of exterior wall and multiplied by the number of floors including basements which are in the primary function of the building.

jj. **Floor Area Ratio.** The square footage of floor area on all floors for each square foot of lot area.

kk. **Garage, Private.** A garage used for storage purposes only. Garages shall not be constructed without a hard surface driveway leading from the entrance of the garage to the public or private street. Said garage space shall be limited to a maximum area of:

1. Attached garage size:

(a) Seven and one-half percent (7.5%) of lot size in R-1 and R-2 not to exceed one thousand, two hundred (1,200) square feet in R-1 districts and one thousand (1,000) square feet in R-2 districts; except that in the case of a lot which is in excess of forty thousand (40,000) square feet, a garage the area of which does not exceed one thousand five hundred (1,500) square feet may be constructed.

(b) Eight percent (8%) of lot size for duplex buildings in R-3 and R-4 districts not to exceed one thousand (1,000) square feet.

(c) Five hundred (500) square feet of garage space per unit in a multi-family structure. An attached garage shall not exceed the height of the home to which it is attached.

2. Detached garage size:

(a) Seven percent (7%) of lot size in R-1 and R-2 not to exceed one thousand one hundred (1,100) square feet in R-1 and nine hundred (900) square feet in R-2; except that in the case of a lot which is in excess of forty thousand (40,000) square feet, garage space the area of which does not exceed one thousand five hundred (1,500) square feet may be constructed.

(b) Eight percent (8%) of lot size for duplex buildings in R-3 and R-4 districts not to exceed one thousand (1,000) square feet.

(c) Five hundred (500) square feet of garage space per unit in multi-family structures.

(d) Detached garages shall be a minimum of five (5) feet off of side and rear property lines.

(e) Detached garages shall be no more than fifteen (15) feet in height.

ll. **Garage, Public.** Any building or premises other than a private or storage garage where motor driven vehicles are equipped, repaired, serviced, hired, sold, or stored.

mm. **Ground Floor Area.** The area and square feet measured on a horizontal plane above the ground measured from outside of exterior wall to outside of exterior wall.

nn. **Ground Spinner.** A small spinning device that is similar to wheels in design and effect when placed on the ground and ignited, and that produces a shower of sparks and color when spinning.

oo. **Helicopter or Aerial Spinner.** A spinning device:

1. That consists of a tube up to one-half (1/2) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition;
2. To which some type of propeller or blade device is attached; and
3. That lifts into the air upon ignition, producing a visible or audible effect at the height of flight.

pp. **Home Operation.** An occupation conducted in a dwelling unit, provided that:

1. No person other than members of the family residing on the premises shall be engaged in such occupation.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty five (25%) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one (1) sign, not exceeding two (2) square feet in area, non-illuminated, and mounted flat against the wall of the principal building.
4. No home occupation shall be conducted in any accessory building.
5. There shall be no primary sales, either wholesale or retail, in connection with such home occupation.
6. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard, except that such off-street parking shall be limited to driveways not to exceed twenty (20) feet in width.
7. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio, television or telephone receivers off the premises, or causes fluctuations in line voltage off the premises.

qq. **Illuminating Torch.** A cylindrical tube that:

1. Contains up to one hundred (100) grams of pyrotechnic composition;
2. Produces, upon ignition, a colored fire; and
3. Is either a spike, base or handle type device.

rr. **Indoor Pyrotechnics Special Effects Material.** A chemical material that is clearly labeled by the manufacturer as suitable for indoor use (as provided in National Fire Protection Association Standard 1126 (2001 Edition)).

ss. **Living Space Ratio.** The square footage of open space, less the space used for vehicular movement that exists for each square foot of building floor area.

tt. **Loading Space, Off Street.** Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off street parking spaces are filled. Each said loading space shall be not less than ten (10) feet by fifty (50) feet with a fourteen (14) foot clearance height. Required off street loading space is not to be included as off street parking space in computation of required off street parking space.

uu. **Lot.** For purposes of this ordinance, a lot is a subdivided and recorded parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

1. A single lot of record.
2. A combination of complete lots of record, or complete lots or record and portions of lots of record.

vv. **Lot Frontage.** The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under **Yards** in this section.

ww. **Lot Lines.** The lines bounding lots as defined herein.

xx. **Lot Measurement.**

1. **Depth** of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

2. **Width** of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each

side of the lot, measured across the rear of the required front yard, provided however that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than eighty percent (80%) of the required lot width except in the case of lots on the turning circle of a cul-de- sac or eyebrow. Examples of said measurements may be found in Appendix A.

yy. **Lot of Record.** A lot which is part of a subdivision recorded in the Office of the Recorder of Lake County.

zz. **Lot Types.**

1. **Corner Lot**, defined as a lot located at the intersection of two (2) or more streets.
2. **Interior Lot**, defined as a lot other than a corner lot with only one (1) frontage on a street.
3. **Through Lot**, defined as a lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots.
4. **Reversed Frontage Lot**, defined as a lot on which the frontage is at right angles or approximately right angles (interior angle less than one hundred thirty five (135) degrees) to the general pattern in the area. A reversed frontage lot may also be a corner lot, an interior lot, or a through lot.

aaa. **Mine or Shell.** A device that:

1. Consists of a heavy cardboard or paper tube up to two and one-half (2 1/2) inches in inside diameter, to which a wooden or plastic base is attached;
2. Contains up to forty (40) grams of pyrotechnic composition; and
3. Propels, upon ignition, stars (pellets of pressed pyrotechnic composition that burn with bright color), whistles, parachutes, or combinations thereof; with the tube remaining on the ground.

bbb. **Minor Structures.** Any small, movable structure or construction such as birdhouses; play equipment; arbors; and walls and fences under four (4) feet in height. Such structures shall not be considered accessory buildings and subject to the limitation in number or size as accessory buildings are limited.

ccc. **Missile Type Rocket.** A device that is similar to a sky rocket in size, composition, and effect, and that uses fins rather than a stick for guidance and stability.

ddd. **Open Space.** Total area in square feet of all uncovered open space of the land area within the site to be developed plus one half (½) of covered open spaces such as park shelters and carports.

eee. **Open Space Ratio.** The square footage of site open space provided for each square foot of building floor area.

fff. **Outdoor Advertising Business.** Provision of outdoor displays or display space on a lease or rental basis only.

ggg. **Parking Space, Off-Street.** For the purposes of this ordinance, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three (3) or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, and so that any automobile may be parked and unparked without moving another. All off-street parking areas shall be paved. At a minimum all parking areas shall be constructed with an eight (8) inch compacted aggregate base and a two (2) inch paved surface. Prior to surfacing, adequate surface drainage shall be provided where necessary.

For purposes of rough computation, an off-street parking space and necessary access and maneuvering room may be estimated at three hundred (300) square feet, but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, and improved and maintained in a manner appropriate to the circumstances of the case.

hhh. **Party Popper.** A small plastic or paper item containing not more than sixteen (16) milligrams of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.

iii. **Playhouse.** A freestanding building exclusively for the use of children, with a maximum height of eight (8) feet and a maximum size of forty (40) square feet.

jjj. **Porch, Enclosed.** A covered entrance to a building with or without a separate roof which is enclosed. Any one (1) story or two(2) story enclosed porch, or one having a solid foundation and capable of being enclosed shall be considered a part of the building in the determination of the size of yard or lot coverage, provided, however, that so long as said porch shall not exceed sixty (60) square feet it shall not be considered in calculating setbacks.

kkk. **Porch, Unenclosed.** A covered entrance to a building with or without a separate roof which is not enclosed. An unenclosed one-story porch, erected on piers, even though roofed over, may project into a required front, side, or rear yard area a distance not to exceed six (6) feet and shall not be considered in the determination of the size of yards or lot coverage, provided, however, that said porch shall not exceed sixty (60)square feet and further provided that such a portion shall not be closer than six (6) feet at any such point to any lot line, and that no building shall have such porches projecting into more than one (1) required sideyard.

III. **Portable Sign.** Any device designed to inform or attract attention of persons not on the premises on which the device is located, which device can be easily transported or carried from place to place and which is not attached to the real estate on which located in a permanent manner.

mmm. **Principal Building.** The building on a lot in which is conducted the principal use as permitted on such lot by the regulations of the district in which it is located.

nnn. **Pyrotechnic Composition.** A mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. Pyrotechnic compositions will not explode upon ignition unless severely confined.

ooo. **Recreation Space.** Total area in square feet which is countable as open space but is not paved in streets, walks, or driveways and is suitable for recreation pursuits. The smallest countable recreation area is one thousand (1,000) square feet. That part of a recreation area having a dimension of less than twenty (20) feet shall not be included as countable recreation space.

ppp. **Recreation Space Ratio.** The square footage of space for active recreation provided for each square foot of building floor area.

qqq. **Roman Candle.** A device that consists of a heavy paper or cardboard tube not exceeding three-eighths (3/8) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition. Upon ignition, up to ten (10) stars (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several second intervals.

rrr. **Setback.** The minimum horizontal distance between a property line and the nearest point of a building or any projection thereto, excluding window sills, belt courses, cornices, eaves, stoops, and other architectural features, provided, however, that such features shall not project more than two (2) feet into any required yard.

sss. **Sign.** Any device designated to inform or attract attention of persons not on the premises on which the sign is located, provided however that the following shall not be included in the application of the regulations herein. Sign regulations can be found in Section 10-146.

ttt. **Sky Rocket.** A device that:

1. Consists of a tube that contains pyrotechnic composition;
2. Contains a stick for guidance and stability; and
3. Rises into the air upon ignition, producing a burst of color or noise at the height of flight.

uuu. **Smoke Device.** A tube or sphere containing pyrotechnic composition that produces white or colored smoke upon ignition as the primary effect.

vvv. **Snake or Glow Worm.** A pressed pellet or pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices do not contain mercuric thiocyanate.

www. **Snapper.** A small, paper wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.

xxx. **Special Exception.** A special exception is a use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as special exceptions, if specific provision for such special exceptions is made in this zoning ordinance.

yyy. **Stoops.** A stoop will become an unenclosed, unroofed porch, platform, entrance stairway, or small veranda at a house door not to exceed sixty (60) square feet.

zzz. **Storage Shed.** An accessory building to be used for the private storage of personal items incidental to the maintenance and upkeep of the property on which they are located.

aaaa. **Story.** For purposes of determining elevation, that portion of a building included between the surface of a floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

bbbb. **Street.** A right-of-way other than an alley, dedicated or otherwise established for public use which affords the principal means of access to abutting property.

cccc. **Street Line.** The right-of-way line of a street.

dddd. **Structural Alterations.** Any change in the supporting members of a building or structure or any substantial change in the roof or in the exterior walls.

eeee. **Structure.** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings mobile homes, walls, fences, billboards, signs, and poster panels.

ffff. **Travel Trailer.** A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, having a body width not exceeding eight (8) feet.



gggg. **Trick Match.** A kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.

hhhh. **Trick Noisemaker.** An item that produces a small report intended to surprise the user.

iiii. **Variance.** A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces. The establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district.

jjjj. **Vision Clearance.** An unoccupied triangular space at the corner of a corner lot which is bounded by the street right-of-way lines and a setback line connecting points determined by measurements from the corner of each street line.

kkkk. **Wheel.** A pyrotechnic device that:

1. Is attached to a post or tree by means of a nail or string;
2. Contains up to six (6) driver units (tubes not exceeding one half (1/2) inch in inside diameter) containing up to sixty (60) grams of composition per driver unit; and
3. Revolves, upon ignition, producing a shower of color and sparks and sometimes a whistling effect.

llll. **Yard.** A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from thirty (30) inches above the ground level of the graded lot upward, provided however that fences, walls, poles, posts, minor structures, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

mmmm. **Yard, Front.** A yard extending between side lot lines across the front of a lot adjoining a public or private street.

In any required front yard, within any corner lot, no fence, wall, hedge, or other structure or planting shall be erected, placed, or maintained above the height of thirty (30) inches, within the triangular area formed by the intersecting right-of-way lines and a straight line joining said right-of-way lines at points which are thirty (30) feet distant from the point of intersection, measured along said right-of-way lines.

In the case of through lots or corner lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the administrative official may waive the requirement for the normal front yard and substitute therefor a special yard requirement which shall not exceed the average of the yards provided on adjacent lots.

Depth of required front yards shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersection shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be parallel.

nnnn. **Yard, Rear.** A yard extending across the rear of the lot between inner side yard lines. In the case of through lots, there will be no rear yards, but only front and side yards.

oooo. **Yard, Side.** A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street. In the case of through lots, side yards shall extend from the rear lines of front yards required. In the case of corner lots, yards remaining after full-depth front yards have been established shall be considered side yards.

Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

pppp. **Yard, Special.** A yard behind any required yard adjacent to a public street, required to perform the same functions as a side or rear yard, but adjacent to a lot line so placed or oriented that neither the term **side yard** nor the term **rear yard** clearly applies. In such cases, the administrative official shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the district, determining which shall apply by the relation of the portion of the lot on which the yard is to be located to the adjoining lot or lots, with due regard to the orientation and location of structures and buildable areas thereon.

qqqq. **Zoning Administrator.** The administrative official appointed by the Town Council of the Town of Dyer, Lake County, Indiana who shall be charged with the daily administration of this ordinance and other duties as more particularly set forth herein.

(Ord. No. 2007-33, 12-27-07; Am. Ord. No. 2009-18, 11-18-09)

## **Sec. 10-121 Establishment of Districts - Provisions for Official Zoning Map.**

a. **Official Zoning Map.** The Town is divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is adopted by reference and declared to be a part of this ordinance.

The Official Zoning Map shall be identified by the signature of the President of the Town Council attested by the Town Clerk-Treasurer, and bearing the seal of the Town under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 2 of Ordinance No. 83-46 as amended of the Town of Dyer, State of Indiana", together with the date of the adoption of this ordinance.

If, in accordance with the provisions of this ordinance and *I.C.*, 1971, § 36-7-4-607, *et seq.*, changes are made in district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Town Council, with an entry on the Official Zoning Map as follows: "On (date), by official action of the Town Council, the following (change) changes were made in the Official Zoning Map: (brief description of nature of change)", which entry shall be signed by the President of the Town Council and attested by the Town Clerk-Treasurer. No amendment to this ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this ordinance and punishable as provided under Section 10-142.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map which shall be located in the office of the Town Clerk- Treasurer shall be the final authority as to the current zoning status of land and water area buildings, and other structures in the Town.

**b. Changes in the Official Zoning Map - Procedures.** A change in the Official Zoning Map shall be initiated by filing a petition and payment of the necessary fee with the office of the Zoning Administrator in a form and manner set out in Indiana Code and the Rules of the Dyer Plan Commission. A petition for zone change requires a public hearing and due notice to interested parties as described in *IC*, 36-7-4-604 and the Rules of the Plan Commission. At said public hearing, the Plan Commission shall consider petitions for zone change and shall pay reasonable regard to the criteria established in *IC*, 36-7-4-603, before making a recommendation, duly certified as required by Indiana Code, to the Dyer Town Council. In considering a petition for zone change, the Plan Commission or the Town Council may allow or require written commitments to be executed by the petitioner in a form and manner set out in the Rules of the Dyer Plan Commission

**c. Replacement of Official Zoning Map.** In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Town Council may by resolution adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the President of the Town Council attested by the Town Clerk-Treasurer, and bearing the seal of the Town under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of Ordinance 83-46, as amended, of the Town of Dyer, State of Indiana."

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved, together with all available records pertaining to its adoption or amendment.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-122 Rules for Interpretation of District Boundaries.**

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- a. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.
- b. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- c. Boundaries indicated as approximately following Town limits shall be construed as following such Town limits.
- d. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- e. Boundaries indicated as following shore lines shall be construed as moving with the actual shore line, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, lakes, or other bodies of water shall be construed to follow such center lines.
- f. Boundaries indicated as parallel to or extensions of features indicated in subsections a. through e. above shall be so construed. Distance not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- g. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections a. through f. above, the Plan Commission shall interpret the district boundaries.
- h. Where a district boundary line divides a lot or parcel of real estate not platted, which was in single ownership at the time of passage of this ordinance, the Board of Zoning Appeals may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

(Ord. No. 2007-33, 12-27-07)

## **Sec. 10-123 Application of District Regulations.**

The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

- a. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.
- b. No building or other structure shall hereafter be erected or altered than herein required, or in any other manner contrary to the provisions of this ordinance:
  1. To exceed the height or bulk;
  2. To accommodate or house a great number of families;
  3. To occupy a greater percentage of lot area;
  4. To have narrower or smaller rear yards, front yards, side yards, or other open spaces.
- c. No part of a yard, or other open space, or off-street parking or loading space required or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building unless specifically allowed or required by the zoning district regulations in which said building is located.
- d. No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.
- e. All territory which may hereafter be annexed to the Town shall be considered to be in the rural development, RD unless otherwise specifically classified.

(Ord. No. 2007-33, 12-27-07)

## **Sec. 10-124 Non-Conforming Lots, Non-Conforming Uses of Land, Non-Conforming Structures, Non-Conforming Uses of Structures and Premises.**

- a. **Intent.** Within the districts established by this ordinance or amendments that may later be adopted there exist:
  1. Lots;
  2. Structures;
  3. Uses of land and structures;

which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment. It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival.

Non-conforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment to a building or premises of additional signs intended to be seen from off the premises.

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 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. **Actual construction** is defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

- b. **Non-Conforming 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 at the effective date of adoption or amendment of this ordinance, subject only to the limitations set forth in Section 10-130, paragraph c, footnote 3. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership at the time of adoption of this ordinance. This provision shall apply even though such lot fails 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 these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located as set forth in this ordinance. Variance of yard requirements shall be obtained only through action of the Board of Zoning Appeals.

If two (2) or more lots or 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 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 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.

c. **Non-Conforming Uses of Land (Or Land with Minor Structures Only).** Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where such use involves no individual structure with a replacement cost exceeding two thousand five hundred dollars (\$2,500.00), the use may be continued so long as it remains otherwise lawful, provided:

1. No such non-conforming use 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.
2. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance.
3. If any such non-conforming use of land ceases for any reason for a period of more than six (6) consecutive months or for eighteen (18) months during any three-year period, (except when government action prohibit access to the land) the land shall not thereafter be used except in conformity with the regulations of the district in which it is located.
4. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such non-conforming use of land.

d. **Non-Conforming Structures.** Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on use, area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure as set forth in the district regulations, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be enlarged, remodeled, or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
2. Should such nonconforming structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
3. Should such structure be moved for any distance whatever, it shall thereafter conform to the regulations for the district which it is located after it is moved.
4. Should such non-conforming structure be remodeled to the extent of more than fifty percent (50%) of its replacement cost at the time of remodeling, it shall not be remodeled except in conformity with the provisions of this ordinance. The cost of remodeling shall be deemed to be cumulative and each successive remodeling shall be added to the cost of prior remodeling undertaken subsequent to the adoption of this ordinance.

e. **Non-Conforming Uses of Structures and Premises in Combination.** If lawful use involving individual structures with a replacement cost of two thousand five hundred dollars (\$2,500.00) or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not 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:

1. 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.
2. Any non-conforming use may be extended throughout any parts of a building which was 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.
3. Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed.
4. When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period (except when government action prohibits access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
5. Where non-conforming use status applies to a structure and premises in combination, removal, or destruction of the structure shall eliminate the non-conforming status of the land. **Destruction** for the purpose of this subsection is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at the time of destruction.
6. If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe due to lack of repairs and maintenance, and is declared by the Building Commissioner to be unsafe or unlawful by reason of physical condition in accordance with the provisions of *I.C., 1971, § 36-7-9-1, et seq.*, and is either remodeled to an extent of more than fifty percent (50%) of its replacement cost or is required to be destroyed, it shall not be remodeled, restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Nothing in this ordinance 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 official charged with protecting the public safety, upon order of such official.

f. **Uses Under Special Exception Provisions Not Non-Conforming Uses.** Any use which is permitted as a special exception or use variance in a district under the terms of this ordinance shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

(Ord. No. 2007-33, 12-27-07)

## **Sec. 10-125 Protection of Shoreland, Watercourses and Wetlands.**

### **a. General.**

1. The purpose of this section is to prevent and control water pollution; protect spawning grounds, fish and aquatic life, and to preserve shore cover and natural beauty.

2. All lakes, ponds, or flowages of one (1) acre or more shall be considered as navigable for the purposes of this ordinance.

3. Rivers or streams shall be considered navigable for the purpose of this ordinance if they are indicated as "continuous" on the United States Geological Quadrangle Survey Maps.

4. The provisions of this section shall apply to the shorelands of all navigable waters.

### **b. Setbacks From The Water.**

1. For lots that abut on navigable waters all buildings and structures except piers, marinas, boat houses and similar uses which require a lesser setback as determined by the Board of Zoning Appeals, shall be set back at least one hundred (100) feet from the high water line and elevated at least two (2) feet above the experienced high water elevation.

2. Seepage, pits, and soil absorption fields shall be set back at least fifty (50) feet from the normal high water elevation. The town engineer shall determine the normal high water elevation or line where not established by the current Flood Insurance Rate Maps. Furthermore, it shall be the duty of the town engineer to determine that the design, location and construction of private sewage disposal facilities are in conformation with applicable state and municipal codes.

### **c. Filling, Grading and Lagooning.**

1. A Certificate of Zoning Compliance shall be required for any filling or grading:

a. Of the bed of a navigable body of water.

b. Of an area which is within three hundred (300) feet horizontal distance of a stream, lake or pond and twelve thousand (12,000) feet of a lake and which has surface drainage toward the water and which there is filling of more than five hundred (500) square feet of any wetland which is contiguous to the water. For purposes of this section a **wetland** shall be defined as any area where groundwater is at or near the surface a substantial part of the year.

c. On slopes of twenty percent (20%) or more.

d. Of more than one thousand (1,000) square feet on slopes of twelve (12%) - twenty (20%) percent.

e. Of more than two thousand (2,000) square feet on slopes of 12 percent (12%) or less.

2. A Certificate of Zoning Compliance shall be required before constructing, or commencing work on any artificial water, canal ditch, lagoon, pond, lake or similar waterway which is within five hundred (500) feet of the high water mark of a navigable body of water or where the purpose is ultimate connection conservation practices such as terraces, diversions and grassed waterways which are used for sediment retardation.

3. In the event any lake, pond, stream, flowage, watercourse, or wetland shall be under the jurisdiction of any state, county, or federal agency, the applicant shall submit to the Zoning Administrator an appropriate permit or approval from such agency as a condition of securing a Certificate of Zoning Compliance.

4. In granting a Certificate of Zoning Compliance for filling, grading, or lagooning the Zoning Administrator may attach the following conditions in addition to those specified elsewhere in this ordinance:

a. The smallest amount of bare ground be exposed for the shortest time feasible.

b. Temporary ground cover such as mulch be used and permanent cover such as sod be planted.

c. Diversions, silting basins, terraces and other methods to trap sediment be used.

d. Dredging to a firm bottom before filling.

e. Dredging be conducted in such a manner as to avoid creation of fish trap conditions.

f. Fill is stabilized according to accepted engineering standards.

g. Fill will not restrict a floodway or destroy the storage capacity of a flood plain.

h. Walls of a channel or artificial watercourse be stabilized to prevent slumping.



i. Sides of channels or artificial watercourses be constructed with side slopes of four (4) horizontal to one (1) vertical or flatter, unless vertical bulkheading is provided or side slope stabilization is provided to the satisfaction of the Town Engineer.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-126 Excavations.**

a. The excavations from or deposits on the earth of rock, stone, gravel, sand, earth, minerals, or building or construction materials shall not be construed to be a permitted use in any district established by this ordinance unless and until a Certificate of Zoning Compliance shall first have been secured therefor, except for the following defined extractions and deposits.

1. Excavations for the foundation or basement of any building or for a swimming pool for which a Certificate of Zoning Compliance and a building permit have been issued, or deposits on the earth of any building or construction materials to be used in a structure for which such zoning permit and building permit have been issued.

2. Grading of any parcel of land for a permitted use where no bank is left standing and exposed of more than ten (10) feet in vertical height and when less than one thousand (1,000) cubic yards of earth is removed from the premises.

3. Grading in a subdivision which has been approved by the Plan Commission in accordance with the Subdivision Ordinance and amendments thereto.

4. Excavations by any public agency or public utility, including the Town of Dyer, for the installation, operation, inspection, repair or replacement of any of its facilities.

b. Any quarry existing and operational as such on the effective date of this ordinance shall obtain a new use permit and conform with the provisions of this ordinance within one (1) year of the adoption of this ordinance.

c. Only the Plan Commission shall have the power to grant a Certificate of Zoning Compliance, revocable and valid for specified periods of time, to permit extractions from or deposits on the earth of rock, stone, gravel, sand, earth, minerals, or building or construction materials, as set forth herein above.

d. The Zoning Administrator shall make such inspections as he deems necessary or as are required by the Plan Commission to ensure that all work is in accordance with the Certificate of Zoning Compliance. All inspection services shall be paid for by the applicant in the amount established by ordinance. The following information shall be submitted in electronic format with the application for a Certificate of Zoning Compliance for excavation operations including borrow pits, topsoil removal, and storage areas:

1. A map of existing conditions showing the lands proposed to be included in the excavation area and the lands within one thousand (1,000) feet on in all directions. This map shall show the boundaries of the excavation area and existing conditions on the mapped lands including:

a. Existing contours (with a contour interval appropriate to the site which accurately reflects the topographic condition);

b. Water bodies and drainage courses - depth of water table below existing terrain;

c. Estimate of depth and extent of deposit;

d. The present use of adjoining lands (residential, commercial, industrial, institutional, recreation, agricultural, etc.);

e. The present zoning classification of subject and adjoining lands and setback requirements;

f. All publicly owned lands;

g. Public rights-of-way road types,

h. Easements and railroad lines.

2. A plan of operational areas showing:

a. Area proposed for excavation;

b. Area proposed for setting ponds and wash water outlets;

c. Areas proposed for processing facilities and storage;

d. Area proposed for production facilities (if any) for resources related industry;

e. Area proposed for excavation entrance, office dispatcher headquarters, off-street parking, and equipment storage.

3. A plan of excavation showing:

a. Division of the area proposed for excavation into one (1) or more excavation units which are to be excavated and rehabilitated in sequences. Estimated dates for the rehabilitation of the excavation units should be given;

b. Methods to be used to minimize the effect of erosion by wind and water on the entire tract, such as the planting of

ground cover vegetation;

- c. Methods of screening the area of operations from view, such as planting screens or the use of earth mounds;
- d. The access or haul road system.

4. A conceptual plan of development for the rehabilitation and re-use of the entire excavation area following excavation showing:

- a. A proposed plan for landscape rehabilitation including grading, drainage, planting, and similar appropriate installations;
- b. The proposed water area (if any) resulting from excavation;
- c. A proposed plan of functional re-use of the total excavation area showing, diagrammatically, future locations of residential, commercial, industrial, public, semi-public, and other land uses, if any, and the principal elements of a future traffic circulation of system to service the area. Sufficient characteristics of proposed development such as population density ranges, types of commercial or industrial usage, and kinds of public areas.

5. A bond with surety satisfactory to the Council in the amount of one thousand dollars (\$1,000.00) per acre of area proposed to be excavated which shall run to the Town Council to insure the satisfactory completion of the landscape rehabilitation shown in the plan of development following the excavation process.

The excavation area will be used primarily for the excavation of sand, gravel, stock, and other earth material and the processing, storage, stockpiling, distribution, and sale thereof.

The following uses may be permitted when they are determined to be functionally beneficial to the excavation activity appropriate to the location and environs and not detrimental to adjoining lands:

- a. Concrete batching plants;
- b. Mixing plants for either portland cement or asphalt concrete;
- c. Concrete block, pipe, beam, slab, or panel plants.

Other excavation area requirements:

1. **Slopes.** No production from an open pit shall be permitted which creates a finished slope steeper than one and one-half (1½) feet horizontal to one (1) foot vertical for the excavation of sand and gravel, or which creates a finished slope steeper than one (1) foot horizontal to one (1) foot vertical for the excavation of products other than sand, except that in locations where the soil or rock content is such that vertical cuts are proven to be safe, a vertical cut up to eight (8) feet in depth from ground level with a shelf no less than twelve (12) feet wide followed by a vertical cut thereafter of any depth shall be allowed.

2. **Fencing.** Prior to the commencement of any operations in an excavation area or part thereof located within five hundred (500) feet of a developed residential area, public park, or other institution or public highway, a fence shall be constructed enclosing the excavation area or part within that prescribed distance. Shops, garages, warehouses, storage areas, offices, dwelling units and other areas which have not been excavated and are not used by the excavation area, need not be fenced. Said fence shall be of woven wire, not capable of receiving a child's foot and be at least four (4) feet in height, or a planting of shrubs capable of producing a tight, practically impenetrable hedge (i.e., multi-flora rose). The bottom of the fence shall conform to the ground surface so as to prevent any opening between it and the ground surface exceeding four (4) inches. Gates of the same height as the fence shall be installed at all points of vehicular or pedestrian ingress and egress. Said gates shall be equipped with keyed locks and shall be kept locked at all times when the excavation area operations are shut down. Said fence, gates, and locks shall be maintained in good condition.

3. **Hours of Operation.** Excavation and material processing activities permitted in the excavation area shall be limited to the hours of 7:00 a.m. to 8:00 p.m. (in keeping with Section 6-59), except in the following situations:

- a. Where required by public authorities;
- b. Where work requires a continuous flow of materials;
- c. Where necessary due to public emergencies;
- d. Where any necessary and reasonable repairs to equipment are required.

4. **Ingress, Egress and Traffic Safety.** Access roads to any excavation area shall be limited to one (1), or at most two (2) points and shall be constructed on a level with the pavement of any public street or highway for a distance of not less than eighty (80) feet therefrom, and said eighty (80) feet of road shall be improved with a dust proof all weather surface. Adequate sight distance shall be maintained for traffic safety in compliance with the standards and requirements of the local highway authorities.

5. **Off-Street Parking.** Off-street parking shall be provided for all equipment and for cars of employees.

6. **Screens.** Screen planting consisting of a variety of trees, shrubs, or both in the same planting area, or a combination of seeded earth mounds and plant material screens shall be constructed and planted so as to form dense screens to a height appropriate to block out objectional features and maintained along the perimeter of any area being operated where said

perimeter abuts a public thoroughfare or a developed residential area.

7. **Drainage.** Upon the completion of operations, the land shall be left in a safe condition so that sufficient drainage shall be provided so as to prevent water pockets or undue erosion, with all grading and drainage such that both natural storm water leaves the entire property at the original, natural drainage points and that the area drainage to any one (1) such point is not increased.

8. Excavations made to water producing depths and proposed as water areas in the plan of development must comply with section 905.0 of the Book of Standards.

9. The rehabilitation of the excavation shall be in conformance with the plan of development submitted with the application.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-127 Private Swimming Pools.**

a. A private swimming pool, as regulated herein, shall be any pool, or open tank, not located within a completely enclosed building and containing or normally capable of containing water to a depth at any point greater than one and one half (1½) feet. No such swimming pool shall be allowed in any residence or rural development district except as an accessory use and unless it complies with the following conditions and requirements.

1. The pool is intended and is to be used solely for the enjoyment of the occupants of the principal use of the property on which it is located.

2. It may not be located closer than ten percent (10%) of the lot width as measured at the front building line to any property line of the property in which it is located and under no circumstances may be located within a required side yard.

3. The swimming pool or the entire property on which it is located, shall be so walled or fenced (minimum height of five (5) feet and a maximum height of six (6) feet) as to prevent uncontrolled access to the pool by children from the street or from adjacent properties and shall provide a drainage system which will dispose of the water without runoff onto adjacent properties.

4. Effective June 1, 2021, a pool without a wall or fence as described above is nonetheless compliant with this Section if the pool is covered with a Safety Cover at all times while it is unoccupied and unattended. A "Safety Cover" is a waterproof cover specifically intended for use on a pool and capable of supporting no less than 485 pounds.

(Ord. No. 2007-33, 12-27-07; Am. Ord. No. 2021-12, 6-10-21)

#### **Sec. 10-128 Temporary Tract Offices.**

a. Temporary tract office in any district shall be located on the property to which it is appurtenant and shall be limited to a twelve (12) month period at the expiration of which time the applicant may request a further extension of time. Otherwise the tract office shall be removed at the expense of the owner, subject to the following limitations:

1. The applicant shall secure a Certificate of Zoning Compliance from the Zoning Administrator which shall be valid for a period of time not to exceed one (1) year.

2. The Certificate of Zoning Compliance may be renewed annually.

3. The property on which the temporary tract office is located must be an active construction site.

4. The applicant shall pay a fee in accordance with Section 7-60 for each original issuance and renewal.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-129 Filling Stations.**

Construction of filling stations shall comply with state and federal regulations.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-130 Schedule of Zoning Districts Adopted.**

District regulations shall be as follows in the Schedule of Zoning Districts and in Section 10-131 of this ordinance, entitled "Supplementary District Regulations".

a. **Zoning Districts.** The following Zoning Districts are established:

1. Residential Districts:

a. RD Rural Development District.

b. R-1 Residential Single-Family (Low Density).

c. R-2 Residential Single-Family (Medium Density).

d. R-3 Residential Duplex.



- e. R-4 Residential Multi-Family District.
- f. R-5M Mobile Home District.
- 2. Commercial Districts:
  - a. B-1 Convenience Commercial District.
  - b. B-2 General Commercial District.
  - c. B-3 Highway Commercial District.
- 3. Light Industrial District (I).
- 4. Residential/Business (R/B).
- 5. Planned Unit Development (PUD).
- 6. Special Use District (SUD).
- b. **General Description of Zoning Districts.**

1. **Residential Districts.**

a. **RD - Rural Development.** This district provides a holding zone for areas that may be required for future urban development. These areas will be rezoned in accordance with the use designation appearing on the master plan map where logical extension of utilities and facilities can be insured. This district will also provide for a continuation of the development of large-lot rural subdivisions served by on-site water supply and sewage disposal systems.

b. **R-1 Residential, Single-Family, Low-Density.** This district provides for existing and developing larger lot developments for families wishing a lower density, more open living environment.

c. **R-2 Residential, Single-Family, Medium Density.** This district accommodates single- family development on smaller lots to provide for a variety in single-family residential living conditions.

d. **R-3 Residential Duplex.** This district provides for modern medium density development.

e. **R-4 Residential, Multi-Family.** This district provides for areas for high-density, multi- family development, exclusive of areas developed as Planned Unit Developments.

f. **R-5M Residential, Mobile Home District.** This district provides for the development of mobile home districts.

2. **Commercial Districts.**

a. **B-1 Convenience Commercial.** This district provides for minor shopping areas at the edges of residential neighborhoods to provide for the day-to-day needs for goods and services. These uses should not be of the type or magnitude to compete directly with the uses found in the B-2 District or B-3 District. Appropriate areas should be zoned for B-1 uses only after the new residential neighborhoods proposed on the master plan becomes substantially developed.

b. **B-2 General Commercial.** This district provides for the development of a central commercial center to accommodate the principal business and shopping functions in the municipality.

c. **B-3 Highway Commercial.** This district provides appropriate areas for highway-oriented commercial uses and those requiring large lots for off-street parking and outdoor display or storage of merchandise.

3. **I Light Industrial.** This district reserves lands in appropriate locations for development of light industry.

4. **R/B Residential Business.** This district allows for the development of land as a combination of single family residential and commercial use on lots of one (1) acre or more.

5. **PUD - Planned Unit Development.** This district provides for flexibility in future community needs, in keeping abreast of new building methods, to provide for the planning of groups of dwellings, to secure the benefit of solar orientation, climate control, and additional privacy, and to provide for variety in dwelling types to meet changing needs of future residences; for commercial buildings and groups thereof to secure greater convenience to the public through improved methods of merchandising, transportation, office management, and distribution of services necessary to the public welfare; for industrial buildings and groups thereof to secure greater efficiency in production through improved methods of manufacturing, transportation, office management, and distribution of products necessary to the public welfare. The PUD may necessitate the variation in the use and area requirements of this ordinance which are designed primarily to apply to the traditional pattern of lot development and building arrangement generally prevailing within the Town.

6. **SUD Special Use District.** A zoning district in which the development of lots shall be according to a plan, and in which development and/or improvements may not correspond in lot size, bulk, type of structure, density, lot coverage or required open space to the regulations otherwise required by the building, subdivision and zoning ordinances.

c. **Schedule of District Regulations.** It shall be unlawful to erect or alter any building unless the following minimum lot, yard areas and bulk controls are provided and maintained in connection with such building.

<i><b>District Yd.</b></i>	<i><b>Min. Area (sq. ft.)</b></i>	<i><b>Max. Bldg. Hgt. (ft.)</b></i>	<i><b>Min. Lot Depth</b></i>	<i><b>Min. Lot Width (ft.)</b></i>	<i><b>Min. Front. Yd. Setback (ft.)<sup>1</sup></b></i>	<i><b>Min. Rear Yd. Setback (ft.)</b></i>	<i><b>Min. Side Yd. Setback (per side)<sup>2</sup></b></i>	
							<i><b>Interior (ft.)</b></i>	<i><b>Corner (ft.)</b></i>
<i><b>District Yd.</b></i>	<i><b>Min. Area (sq. ft.)</b></i>	<i><b>Max. Bldg. Hgt. (ft.)</b></i>	<i><b>Min. Lot Depth</b></i>	<i><b>Min. Lot Width (ft.)</b></i>	<i><b>Min. Front. Yd. Setback (ft.)<sup>1</sup></b></i>	<i><b>Min. Rear Yd. Setback (ft.)</b></i>	<i><b>Min. Side Yd. Setback (per side)<sup>2</sup></b></i>	
							<i><b>Interior (ft.)</b></i>	<i><b>Corner (ft.)</b></i>
RD	87,120	35	200	240	40 <sup>1, 12</sup>	35 <sup>10</sup>	50	60
R-1	15,000 <sup>3</sup>	35	150	100	40 <sup>1, 12</sup>	30 <sup>4, 10</sup>	15	40
R-2	12,000 <sup>3</sup>	35	150	80	30 <sup>1, 12</sup>	30 <sup>4, 10</sup>	08	30
R-3	16,500 <sup>3, 7</sup>	35	150	110	30 <sup>12</sup>	30 <sup>10</sup>	08	30
R-4 <sup>5</sup>	20,000 <sup>3, 7</sup>	40	150	120	30 <sup>1, 12</sup>	20 <sup>4, 10</sup>	10	30
R-5M	12,000	20	150	80	30 <sup>12</sup>	30 <sup>10</sup>	15	30
B-1	15,000	30	NA	90	30 <sup>6</sup>	20 <sup>6</sup>	20 <sup>6</sup>	30 <sup>6</sup>
B-2	15,000	40	NA	90	30 <sup>6</sup>	20 <sup>6</sup>	07 <sup>6</sup>	30 <sup>6</sup>
B-3	21,780	40	NA	90	45 <sup>6</sup>	20 <sup>6</sup>	20 <sup>6</sup>	45 <sup>6</sup>
I	21,780	40	NA	90	20 <sup>8</sup>	20 <sup>8</sup>	10	20 <sup>8</sup>
RB	43,560	40	150	200	40	35	20	40
PUD <sup>9</sup>	80%	12	80%	80%	80%	80%	11	11
SUD <sup>13</sup>	Varies	Varies	NA	Varies	Varies	Varies	Varies	Varies

<sup>1</sup> Where adjacent structures have front yard setbacks different from those required, the minimum front yard setback shall be the average setback of such structures, but in no case shall the front yard setback be less than twenty (20) feet.

<sup>2</sup> Buildings over two (2) stories in height shall require five (5) feet of additional side yard on each side for each additional story in addition to the required minimum side yard.

<sup>3</sup> A one-family dwelling may be erected on a lot having less than the minimum required area and width provided the lot existed by virtue of a recorded plat or deed at the time of passage of this ordinance; however, in no event shall a one-family dwelling be erected on a lot less than four thousand (4,000) square feet in area or less than forty (40) feet in width. Such a lot shall be in separate ownership from abutting lands. If abutting land and the substandard lot are owned by the same owner, the substandard lot shall not be sold or used without full compliance with the provisions of this ordinance.

<sup>4</sup> See Section 10-120v.

<sup>5</sup> Multi-family dwellings must also comply with the land use intensity standards as found in Section 10-131e.

<sup>6</sup> May be used for parking development.

<sup>7</sup> For single-family uses the lot and area requirements of the R-2 District shall apply.

<sup>8</sup> Must be landscaped, no vehicle parking.

<sup>9</sup> Five (5) acres single family; two (2) acres multi-family; five (5) acres non-residential; see Section 10-131m for further details.

<sup>10</sup> A rear yard deck shall be permitted to extend into the required rear yard setback fifty percent (50%) of the required rear yard depth, provided however that any portion of said deck that extends into the required rear yard setback shall not be allowed to be, or become, enclosed or roofed in any manner.

<sup>11</sup> Maximum building height shall be the same as that of the most comparable district in terms of zoning and use.

<sup>12</sup> A front yard deck shall be permitted to extend into the required front yard setback up to seven and one-half (7.5) feet or a distance not to exceed twenty-five percent (25%) of the required front yard setback, whichever is less, provided however that any portion of said deck that extends into the front yard setback area shall not be allowed to be or become enclosed or roofed in any manner. Further, any front yard decks constructed in accordance with this footnote shall not be used to determine the average front yard setback of adjacent structures referred to in Section 10-130(c) footnote 1. Front yard decks that contain access ramps for purposes of compliance with the Americans with Disabilities Act and/or other handicap access reasons are exempt from the provisions of this section.

<sup>13</sup> Refer to Chapter 10, Article 4, Division II for development standards in designated Special Use Districts.

#### **d. Miscellaneous Regulations.**

1. **Visibility at Intersections in Residential District.** On a corner lot in any residential district, nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two and one-half (2½) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines thirty (30) feet from the point of intersection.

2. **Fences and Walls.** Notwithstanding other provisions of this ordinance, fences and walls shall not be permitted in any required front yard, or along the edge of any front yard, except by special permit issued by the Zoning Administrator. Prior to issuing any such front yard fence permit, the Zoning Administrator shall find that the proposed fence or wall is for decorative purposes only, will not obstruct clear vision, and will not be constructed and situated in such a way as to create a safety hazard. (Also see Section 10-175)

3. **Accessory Buildings in Residential Zoning Districts.**

a. This section applies only to residential zoning districts.

b. No accessory building shall be erected in any required front or side yard, and no separate accessory building shall be erected within five (5) feet of any other building or prior to erection of principal building. Further, storage sheds shall be limited to one hundred sixty-eight (168) square feet in area and twelve (12) feet in height. Additionally, there shall be no more than one (1) type of accessory building per lot; except, provided, however, where the lot is in excess of forty thousand (40,000) square feet, an additional accessory building of each type may be allowed. The additional storage shed shall also be limited to one hundred sixty-eight (168) square feet and twelve (12) feet in height except that storage sheds can be combined as one (1) building so long as the total square footage does not exceed three hundred thirty-six (336) square feet.

4. **Exceptions to Height Regulations.** The height limitations contained in the Schedule of District Regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

5. **Structures to Have Access.** Every building hereafter erected or moved shall be on a lot adjacent to a public or private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

6. **Parking, Storage, or Use of Major Recreational Equipment and, Commercial Equipment and Vehicles Used for Commercial Purposes.**

a. Definitions.

1. **Commercial Equipment.** Any motor vehicle or accessory equipment which meets any of the following conditions:

a. Any trailer that is not specifically designed to tow or haul a recreational vehicle such as a boat, snowmobile, or jet ski.

b. Any vehicle having more than six (6) wheels.

c. Any vehicle having a declared weight of nine thousand (9,000) pounds or more.

d. Any vehicle equipped with a hoisting device, or dump body;

2. **Commercial Purposes.** Operation for professional or business purposes.

3. **Front Yard.** That portion of a yard between the front property line of a parcel of real estate or a lot and a front of a building located on said parcel of real estate or lot as measured from side lot line to side lot line.

4. **Major Recreational Equipment.** Boats, boat trailers, travel trailers, or pick-up campers designed to be mounted on automotive vehicles, and tent trailers, including motor homes that are self-propelled.

5. **Minimum Side Yard.** That area identified in the various districts in Section 10-130c., Schedule of District Regulations which lies between the side lot line and a building located on a parcel of real estate or lot as measured from the front of the building to the rear of the building.

6. **Rear Yard.** That portion of a yard between the rear property line of a parcel of real estate or a lot and the rear of a building located on said parcel of real estate or lot as measured from side lot line to side lot line.

b. No major recreational equipment shall be parked or stored in any minimum side yard. Major recreational equipment may be parked only in a rear yard or a front yard or in a side yard that is other than a minimum side yard, on an asphalt or concrete surface or masonry surface comprised of paving bricks. If the major recreational equipment is parked to the rear of the building on a parcel of real estate or lot, it must comply with the side yard setback restriction in its zoning district insofar as the setback from side and rear property lines are concerned. Major recreational equipment shall not be allowed to extend over any sidewalk or to be parked on any street or right-of-way except that such equipment shall be allowed to be parked on any street or right-of-way for up to forty-eight (48) hours during loading or unloading of such equipment subject to any general parking restrictions on streets or rights-of-way for up to forty-eight (48) hours during loading or unloading of such equipment subject to any general parking restrictions on streets or rights-of-way in the community.

c. Major recreational equipment shall not be used for living, sleeping or housekeeping purposes when parked or stored on any residential lot or in any location not approved for such use.

d. It shall be unlawful to park, use or store commercial equipment in any residential zone other than during the course of a construction, repair or maintenance project unless the equipment is parked within an enclosed structure or is parked temporarily for a period of not more than forty-eight (48) hours for incidental purposes. When such equipment is parked temporarily for incidental purposes, it shall be parked on an asphalt, or concrete surface or masonry surface comprised of paving bricks. This regulation (Section 10-130d.6.d.) shall not apply to residential lots in excess of forty thousand (40,000) square feet.

e. There shall be a maximum of three (3) vehicles not meeting the definition of commercial equipment used for commercial purposes per household.

7. **Parking and Storage of Certain Vehicles.** Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings.

8. **Metal and Post Building Construction.** All commercial, industrial and other non-single or duplex family home principal use buildings within 350 feet of U.S. 30 (Joliet St.), Sheffield Avenue (Hart St.), 81st Avenue, and Calumet Avenue shall be constructed as follows:

A. Primary Building Materials:

1. A **primary building material** shall be defined as the material used on a facade of a building. The **facade of a building** shall be defined as the portion of any exterior elevation that begins at grade, the top of a foundation wall or at the base of the facade and extends to the top of the parapet, wall, or eaves and for the entire width of the building elevation. More than one (1) primary building material may be used on any one (1) facade. A parapet shall be declared to be part of the building facade and shall be defined as that portion of a wall that extends above the roof line of the building.

2. Primary exterior materials shall be sustainable materials, including brick, wood clapboard, fiber cement board, stone, cultured stone, glass and/or other materials similar in appearance and durability with the approval of the Dyer Plan Commission during the site plan review and approval process. Brick, stone, cultured stone or decorative masonry units shall not be painted unless approved.

3. EIFS shall not be permitted as a primary exterior building material nor shall it be considered as a masonry product.

B. Secondary and Accent Materials:

1. In addition to approved primary wall materials, tinted, textured or glazed decorative concrete masonry units, shingles, EIFS, stucco, parging and other materials may be used on facades as an accent or secondary material only, with the approval of the Dyer Plan Commission during the site plan review and approval process. Further, such accent material shall not comprise more than twenty percent (20%) of any building facade.

C. Prohibited Materials: Unfinished concrete block is prohibited in all applications.

1. Glass block except as a specific and definable architectural element is prohibited on any facade abutting a street. Glass block may not be used in lieu of windows or to replace windows.

2. Aluminum and vinyl siding products are prohibited on any facade.

3. Aluminum or vinyl soffits, fascias or trim are prohibited.

D. Material Configuration:

1. Where two (2) or more approved wall materials are used on any facade, they shall be combined horizontally on that facade. The heavier material shall be located along the base.

E. Roof Materials:

1. Pitched roofs should be clad in wood shingles, standing seam metal, slate, dimensional asphalt shingles or similar material.

2. Flat roofs shall be any material approved for a flat roof application.

F. Foundation Construction and Materials:

1. All foundations shall be constructed with a continuous footing and foundation wall to a depth as required by state and local code.

2. Concrete pads and concrete grade beams may be used where soils prohibit the use of a continuous footing.

3. Exposed foundation walls (except those under porches) shall be finished with brick, stone, or cultured stone. The crawlspace of porches shall be enclosed with brick, stone, cultured stone, or wood lattice, or any combination thereof.

Additionally all exposed roof on such principal use buildings shall be asphalt shingles or a metal roof which metal roof shall be architecturally approved by the Plan Commission during the site plan review and approval process.

When a building is a secondary use and is located within three hundred fifty (350) feet of above-named streets, said building shall be faced with brick or other products as defined above on the elevations which are facing said streets, and the exposed roof shall be asphalt shingles or a metal roof approved by the Plan Commission in the manner described above.

9. Site plan review shall be required in all commercial zoning and Special Use Districts in accordance with H.C., 36-7-4-1400 - 1406, inclusive, as outlined hereafter:

a. At any time a property owner seeks to apply for approval to begin new construction or to modify an existing structure such that it results in either an increase or decrease of total square footage of the structure of twenty-five percent (25%) or more in a geographic area zoned or to be zoned as B-1, B-2, B-3, I, SUD, or R/B, the property owner/petitioner shall prepare a preliminary development plan for submission to the Plan Commission.

b. To initiate the procedure for review and approval of a preliminary development plan, the property owner/petitioner shall submit the proposed plan to the Zoning Administrator. The initial submission shall:

1. Be made on forms available at the office of the Zoning Administrator and be submitted with the fee as set forth in Section 10-119.

2. Be accompanied by ten (10) copies of the proposed preliminary development plan.

3. Be accompanied by documentation indicating proof of an ownership interest in the subject property, such as but not limited to, a deed, purchase contract, or a power of attorney, for review by the Commission's attorney.

c. The procedure for review and approval of the preliminary development plan shall be as follows:

1. Petitioner shall attend a staff meeting as scheduled by the Zoning Administrator. Such staff meeting shall be at least ten (10) days prior to the regularly scheduled Plan Commission Study Session at which the project is to be discussed. Petitioner shall submit a proposed preliminary development plan (10 copies) to the Zoning Administrator at least ten (10) days prior to the staff meeting. Subsequent to the staff meeting, petitioner shall attend a Plan Commission Study Session, as scheduled by the Zoning Administrator. At that study session, the petitioner shall provide sufficient individual copies of their proposed plan for all members of the Plan Commission, and a copy in a compatible electronic format for viewing. The petitioner will briefly describe their plan and receive feedback from the Commission and staff.

2. Petitioner shall appear before the Plan Commission at a public meeting to describe and present the preliminary concepts, uses and intent of the proposed preliminary development plan. After confirming that all items of the initial submission are in order, the Plan Commission shall place the proposal on the agenda of their next public meeting and refer the petitioner to the Site Plan Review Committee. The Site Plan Review Committee shall be a committee of the Plan Commission and shall be composed of a member of the Plan Commission, the Town Engineer, the Zoning Administrator and a Site Plan Review Consultant appointed by the Plan Commission. In addition, the Plan Commission may utilize and hire any additional engineers or consultants, as needed, in order to assist the Site Plan Review Committee in the performance of their duties. After review, the Site Plan Committee shall take one (1) of the following actions:

- (a) Recommendation to Plan Commission for approval;
- (b) Recommendation to Plan Commission for denial;
- (c) Recommendation to submit additional information for review; or
- (d) Recommendation to Plan Commission for approval with modifications.

The petitioner may appeal a decision of the Site Plan Review Committee to the Plan Commission.

3. Following review by the Site Plan Review Committee, petitioner shall appear at a regular or special Plan Commission meeting to describe and present the final concepts, uses and intent of the proposed plan for consideration. After review, the Plan Commission shall take one (1) of the following actions:

- (a) Approval;
- (b) Denial;
- (c) Carry over for further consideration at the next regularly scheduled meeting;
- (d) Request the petitioner to submit additional information for review either by the Plan Commission or the Site Plan Review Committee; or
- (e) Approval with modifications.

d. All remedies available to the Plan Commission shall be the same as those contained in Section 10-102 of the Dyer Subdivision Control Ordinance. The review fee shall be that as set forth in Section 10-119 for Site Plan Review.

e. The preliminary development plan shall include both a map and written text and drawings in an electronic form containing the following information. The drawing format must be in either the current or previous version of the AutoDesk AutoCAD software. The submittal shall be provided to the Town in a standard form of magnetic or optical media that is readable by the Town information systems. Alternate drawing formats or means of submittal may be accepted upon prior approval from the Town.

- 1. Elevation and perspective drawing or model of proposed structures.
- 2. A development schedule indicating:
  - (a) The approximate date for beginning construction.

- (b) If staged, the approximate date for beginning construction of each stage.
  - (c) Agreements, provisions or covenants which govern the use, maintenance and continued protection of the development and common space.
  - (d) Plans and diagrams as required to fully explain the development proposal.
3. Petitioner shall designate each lot's intensity of use on the plan.
4. A detailed, written review of the following factors relevant to the development:
- (a) Availability and coordination of water, sanitary sewers, storm water drainage, and other utilities.
  - (b) Management of vehicular and pedestrian traffic in a manner that creates conditions favorable to health, safety, convenience, and the harmonious development of the community.
  - (c) Building setback lines.
  - (d) Building coverage.
  - (e) Building separation.
  - (f) Parking.
  - (g) Landscaping.
  - (h) Height, scale, materials and style of improvements.
  - (i) Signage.
  - (j) Outdoor lighting.
  - (k) Noise.
5. The development factors specified in number 4(a) above, concerning the availability and coordination of water, sanitary sewers, storm water drainage and other utilities shall be in full compliance with the Subdivision Control Ordinance and the Dyer Book of Standards, as may be amended from time to time.
6. The development factors specified in number 4(b) above, concerning the management of vehicular and pedestrian traffic shall ensure the following:
- (a) That the design and location of proposed street and highway access points minimize safety hazards and congestion.
  - (b) That the capacity of adjacent streets and highways is sufficient to safely and efficiently accept traffic that will be generated by the new development.
  - (c) That the entrances, streets, and internal traffic circulation facilities in the development plan are compatible with existing and planned streets and adjacent developments.
7. Except in a Special Use District, the development factors specified in number 4(c), (d), (e), (f), (g), (h), and (i) concerning building setback lines, building coverage, building separation, parking, landscaping, height and materials, and signage shall be in full compliance with the requirements set forth in the Zoning Ordinance, as may be amended from time to time. Additionally, with regard to 4(h), knox boxes shall be required to be installed on businesses that are not occupied twenty-four (24) hours a day.
8. Except in a Special Use District, the development factors specified in number 4(j) above concerning outdoor lighting shall ensure that lighting shall be reflected inward and shall be shielded to the extent that no light ascertainable to a standard light meter held one (1) foot above the ground at the property line shall exceed five (5) foot candles.
9. The development factors specified in number 4(k) concerning noise shall ensure that the development complies with Section 6-59(e).
10. When reviewing a site plan located in any Special Use District, the developmental factors in number 4(c) through (j) shall be governed by developmental standards established by ordinance for that specific Special Use District.
11. The plan documentation and supporting information that must be supplied shall include the following:
- (a) The location and character of the following:
    - i. Existing and proposed primary structures and accessory structures.
    - ii. Utilities.
    - iii. Signage.
    - iv. Landscaping.
  - (b) The nature and intensity of uses in the development.

(c) The condition and size of public thoroughfares and parking, vehicle, and pedestrian facilities.

(d) The location and capacity of drainage facilities and sewer systems serving the development.

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-131 Supplementary District Regulations.**

**a. RD District: Rural Development.**

**1. Uses Permitted.**

- a. Single-family dwelling.
- b. Churches or similar places of worship, parish house, convent.
- c. Elementary schools, high schools, and institutions for higher education, not conducted for profit.
- d. Public parks and playgrounds and other municipal recreations used.
- e. Public libraries and museums.
- f. Golf courses and country clubs, including such commercial activities as dining rooms, bars, pro shops, etc., except that any building so used shall be not less than two hundred (200) feet from any adjoining property.
- g. Customary agricultural operations, provided that no continuing and unreasonable odor or dust producing substance or use shall be permitted within three hundred (300) feet of any property line.
- h. Customary home occupations, provided that there shall be no external evidence of such occupations, except an announcement or professional sign not exceeding two (2) square feet in area, provided that no such sign shall be illuminated.
- i. Customary accessory uses and buildings including private garages, provided such uses are incidental to the principal use and do not include any activity commonly conducted for gain. Any accessory building shall be located on the same lot with the principal building.

**2. Percentage of Lot Coverage.** All buildings including accessory buildings shall not cover more than fifteen percent (15%) of the area of lot.

**3. Building Size.** No one-story dwelling shall be erected having a ground floor liveable area of less than one thousand four hundred (1,400) square feet and no two-story dwelling shall be erected having a ground floor area of less than one thousand (1,000) square feet.

**b. R-1 District: Single-Family Residential District.**

**1. Uses Permitted.**

- a. Single-family dwelling.
- b. Churches or similar places of worship, parish house, convent.
- c. Elementary schools, high schools, and institutions for higher education.
- d. Public parks and playgrounds and other municipal recreations used.
- e. Public libraries and museums.
- f. Golf courses and country clubs including such commercial activities as dining rooms, bars, pro shops, and the like, except that any building so used shall be not less than two hundred (200) feet from any adjoining property.
- g. Customary home occupations, provided that there shall be no external evidence of such occupations, except an announcement or professional sign not exceeding two (2) square feet in area, provided that no such sign shall be illuminated.
- h. Customary accessory uses and buildings including private garages, provided such uses are incidental to the principal use and do not include any activity commonly conducted for gain. Any accessory building shall be located on the same lot with the principal building.

**2. Utility Requirements.** Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

**3. Percentage of Lot Coverage.** All buildings including accessory buildings shall not cover more than thirty percent (30%) of the area of lot.

**4. Building Size.** No one-story dwelling shall be erected having a ground floor liveable area of less than one thousand four hundred (1,400) square feet and no two-story dwelling shall be erected having a ground floor liveable area of less than one thousand (1,000) square feet.

5. Off-Street Parking. Off-street parking for not less than two (2) vehicles shall be provided in either garages or hard surface driveways.

**c. R-2 District: Single-Family Residential District.**

1. Uses Permitted.

All uses permitted in the R-1 District, subject to the regulations set forth therein, except those regulations relating to lot size, side yard requirements, front and rear yard requirements.

2. Utility Requirements. Public sewer and water are required. All utilities including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Percentage of Lot Coverage. All buildings including accessory buildings shall not cover more than thirty percent (30%) of the area of the lot.

4. Building Size. No one-story dwelling shall be erected having a ground floor liveable area of less than one thousand one hundred (1,100) square feet and no two-story dwelling shall be erected having a ground floor liveable area of less than eight hundred (800) square feet.

5. Off-Street Parking. Off-street parking for not less than two (2) vehicles shall be provided in either garages or hard surface driveways.

**d. R-3 District: Residential Duplex.**

1. Uses Permitted.

a. All uses permitted in the R-1 and R-2 Districts.

b. Two-family dwellings.

2. Utility Requirements. Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Percentage of Lot Coverage. All buildings including accessory buildings shall not cover more than forty percent (40%) of the area of the lot. Each unit in this zoning district shall be permitted to cover up to forty percent (40%) of the portion of the lot that said unit occupies however in no case shall the total lot coverage exceed forty percent (40%).

4. Building Size. No building shall be erected for two-family purposes having a ground floor liveable area of less than nine hundred (900) square feet per family.

5. Off-Street Parking. Off-street parking for not less than two (2) vehicles shall be provided in either garages or hard surface driveways.

6. The lot shall be divided according to the number of units for platting purposes in an effort to assure proper assignment of key numbers.

**e. R-4 District: Multiple-Family Residence District.**

1. Uses permitted.

a. All uses permitted in the R-1, R-2 and R-3 Districts.

b. Two-family and multiple-family dwellings.

c. Nursing and convalescent homes but excluding institutions for the insane, feeble minded, drug, or alcohol related patients, however, that such occupancy shall be by special use permit only.

d. Hospital or sanitarium for the treatment of human ailments, however, that such occupancy shall be by special use permit only.

e. Clubs and lodges, except in such clubs or lodges, the chief activity of which is a service customarily carried on as a business or primarily for gain. In conjunction with such club or lodge a dining room may be operated provided it is incidental to the activities of said club or lodge and is conducted for the benefit of the members thereof only, and further provided no sign is displayed advertising such activity.

2. Utility Requirements. Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Required Lot Area. No dwelling shall be established on a lot having an area less than twenty thousand (20,000) square feet, provided, however, that each dwelling shall be located on a lot having an area of not less than the following:

a. Each unit shall have a minimum of four thousand (4,000) square feet of green space on the lot or in the development.



For purposes of this ordinance, the term **bedroom**, shall include nursery, den, guest room, maid's room, and other rooms that are readily converted to bedrooms.

4. Percentage of Lot Coverage. All buildings including accessory buildings shall not cover more than forty percent (40%) of the area of the lot.

5. Building Size. No building shall be erected for multiple-family purposes having a ground floor liveable area of less than nine hundred (900) square feet and no dwelling unit shall contain less liveable floor area than the following:

- a. Efficiency - nine hundred (900) square feet.
- b. One-bedroom - nine hundred (900) square feet.
- c. Each unit in excess of two (2) bedrooms shall add a minimum of one hundred fifty (150) square feet per bedroom.

6. Required Court Dimensions.

a. Outer Courts. An outer court is an open space enclosed wholly or partially by two (2) or more buildings. The width of any outer court shall be not less than two-thirds ( ) the height of any opposing wall forming said court, but not less than ten (10) feet, and the depth shall not be greater than one and one half (1½) times the width.

b. An inner court is an open space circumscribed by a single building.

i. The least dimensions of any inner court shall be not less than two-thirds ( ) the full height of the walls enclosing such court, but not less than thirty (30) feet.

ii. An open and unobstructed passageway shall, be provided at the grade level of each inner court. Such passageway shall have a cross section area and sufficient headroom to permit the passage of fire fighting personnel and equipment (not including motor vehicles and large apparatus) and shall be continuous from the inner court to a yard or an unobstructed open area between buildings.

7. Distance Between Buildings on Same Plot. No principal building shall be closer to any other principal building than the average of the heights of said buildings, but not less than twenty (20) feet.

8. Off-Street Parking. A minimum of two (2) vehicles spaces for each dwelling unit shall be provided on paved parking areas or in private garages, which shall be assigned to each dwelling unit.

9. Lots shall be divided according to the number of units for platting purposes in an effort to assure proper assignment of key numbers.

**f. R-5M District: Mobile Home District.**

1. Uses Permitted.

- a. Mobile homes.
- b. Churches or similar places of worship, parish house, convent.
- c. Elementary schools, middle schools, high schools, and institutions for higher education.

2. Utility Requirements. Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Percentage of Lot Coverage. All buildings including accessory buildings shall not cover more than thirty percent (30%) of the area of lot.

4. Building Size. No dwelling shall have a ground floor liveable area less than six hundred (600) square feet.

5. Off-Street Parking. Off-street parking for at least two (2) vehicles shall be provided on paved driveways.

6. The Dyer Plan Commission may also include the imposition of conditions of use which the Commission deems essential to insure that the location of an R-5M District is consistent with the spirit, purpose and intent of this ordinance and will not substantially and permanently injure the appropriate use of neighboring property, and will substantially serve the public convenience and welfare.

**g. B-1 District: Convenience District.**

1. Uses Permitted.

- Apparel stores
- Art and school supplies stores
- Bakeries
- Barber shops

Beauty shops  
Candy, dairy and ice cream stores  
Churches  
Drug stores  
Dry goods  
Electric and telephone substations by special exception  
Fire stations  
Food stores, including grocery and convenience stores  
Gift shops  
Jewelry stores including watch repairs  
Laundries and dry cleaners automatic self service coin operated  
Meat markets including the processing and sale of meat and meat products when conducted  
as part of the retail business  
Municipal facilities and public utilities  
Parks and playgrounds  
Police stations  
Schools (public and private)  
Shoe and hat repair stores  
Stores and shops normally identified as convenience outlets  
Accessory buildings and accessory uses

2. Utility Requirements. Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Building Height Unit. No building shall be erected to a height in excess of thirty (30) feet.
4. Square Footage Limitation. No single store, shop, office, or facility may exceed five thousand (5,000) square feet.
5. Off-Street Parking. See Section 10-132.
6. Off-Street Loading. See Section 10-132.

7. In any commercial zoning district where a commercial building is to be located on a lot which is adjacent to property zoned for residential use, and in any industrial zoning district where an industrial building is to be located on a lot which is adjacent to property zoned for commercial or residential use, an opaque landscape screen, an opaque fence or screening having a minimum height of six (6) feet shall be provided by the commercial or industrial development along the lot lines of the adjacent property. Additionally, there shall be a minimum of a fifteen (15) foot greenspace between the commercial and residential zoning districts to be provided by the commercial developer. For the purposes of this section **adjacent property** shall mean both adjoining property and property separated by an alley. For further requirements, see Section 10-147.7 regarding bufferyard landscaping requirements.

**h. B-2 District: General Commercial District.**

**1. Uses Permitted.**

All uses permitted in B-1.

Animal hospitals  
Antique shops  
Art galleries  
Banks  
Bicycle stores, sales, rentals and repairs  
Billiards by special exception  
Blue printing and photocopying establishments  
Book and stationery stores

Bowling by special exception

Camera and photography supply stores

Car washes and auto laundries

Carpet, linoleum and tile stores

Caskets and casket supplies

Cat and dog hospitals not including kennels

Catalog sales stores

Catering establishments

Cemeteries

China and glassware stores

Clothing and costume rental shops

Coin and philatelic stores

Communication towers, microwave towers, telephone exchanges including equipment buildings

Contractor's and construction offices

Custom dressmaking and millinery shops

Dance academy

Drive-in restaurants

Electric household appliance, television and radio stores including repairs

Employment agency

Florist shop and conservatories

Furniture stores

Furrier shops including storage

Garden supply and seed stores

Gymnasiums

Haberdashery stores

Hardware stores

Health centers

Health food stores

Hobby stores

Interior decorating shops

Job printing shops

Laboratories - research and testing, including medical and dental

Launderettes and dry cleaning establishments using not more than two (2) clothes cleaning units neither of which shall have a rated capacity of more than forty (40) pounds using fluid which is non-explosive and non-flammable

Leather goods and luggage stores

Libraries

Loan offices

Locksmith shops

Medical and dental clinics

Musical instrument stores including repairs

Office supply stores

Offices, professional and otherwise, office buildings

Optician shops

Orthopedic and medical appliance stores not including manufacturing of such appliances

Package liquor stores and taverns by special exception

Paint and wallpaper stores

Pawn shops

Pet stores

Photograph printing shops

Photography studios

Physical culture and health spas, privately owned and operated, such centers may include gymnastics, reducing salons, karate and judo studios and the like

Picture framing stores

Planned unit development, business

Post office

Public museum

Radio and television broadcasting

Recreational buildings and community centers

Restaurants when no entertainment or dancing is provided

Satellite dish sales establishments

Schools including music, dance and business

Sewing machine stores, household machines only

Shoe and hat repair

Shoe stores

Sporting goods stores

Tailor shops

Tanning salons

Taxidermist shop

Tobacco shops

Typewriter, adding machine and home computer sales and service

Video dating establishments with adequate soundproofing

Video rental sales/services stores

Wearing apparel shops

Accessory buildings and accessory uses

2. Utility Requirements. Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Building Height Limit. Forty (40) feet.

4. Off-Street Parking. See Section 10-132.

5. Off-Street Loading. See Section 10-132.

6. In any commercial zoning district where a commercial building is to be located on a lot which is adjacent to property zoned for residential use, and in any industrial zoning district where an industrial building is to be located on a lot which is adjacent to property zoned for commercial or residential use, an opaque landscape screen, an opaque fence or screening having a minimum height of six (6) feet shall be provided by the commercial or industrial development along contiguous lot lines of the adjacent property. Additionally, there shall be a minimum of a fifteen (15) foot greenspace between commercial and residential zoning districts to be provided by the commercial developer. For purposes of this section **adjacent property** shall mean both adjoining property and property separated by an alley. For further requirements, see Section 10-147.7 regarding bufferyard landscaping requirements.

i. **B-3 District: Highway Commercial.**

1. Uses Permitted.

All uses permitted in B-2.

Those special exception uses allowed in the B-2 District.

Ambulance services

Amusement parks

Automobile accessory stores

Automobile filling stations

Automobile service centers

Boat and motor sales including servicing and repairs

Building materials sales, w/accessory enclosed (fenced) storage

Business establishments with entertainment

Clubs and lodges, private, fraternal or religious

Commercial laundry

Contractor's and construction office excluding the storage of vehicles and large equipment over five thousand (5,000) pounds

Dog kennels

Dry cleaning plants

Extermination shops

Frozen food locker, exclusive of slaughtering

Greenhouse

Hospitals (special exception?)

Hotel

Linen, towel, diaper and other similar services

Live bait stores

Lumberyards

Monument sales

Motel

Motor vehicle salesroom or lot by special exception

Night club which shall be defined as a place of entertainment open at night usually serving food and liquor, having a floor show and providing music and space for dancing

Nurseries

Nursing homes

Parking lots for motor vehicles

Personal storage buildings

Public garage by special exception

Recording studios with adequate soundproofing

Restaurants when dancing and entertainment are provided

Roofing materials sales

Taverns where live entertainment is not provided

Theaters (special exception?)

Travel bureaus and transportation ticket offices

Undertaking establishments and funeral homes

Upholstery shop

Accessory buildings and accessory uses

2. Utility Requirements. Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Building Height Limit. Forty (40) feet.

4. Off-Street Parking. See Section 10-132.

5. Off-Street Loading. See Section 10-132.

6. In any commercial zoning district where a commercial building is to be located on a lot which is adjacent to property zoned for residential use, and in any industrial zoning district where an industrial building is to be located on a lot which is adjacent to property zoned for commercial or residential use, an opaque landscape screen, an opaque fence or screening having a minimum height of six (6) feet shall be provided by the commercial or industrial development along the lot lines of the adjacent property. Additionally, there shall be a minimum of a fifteen (15) foot green space between commercial and residential zoning districts to be provided by the commercial development. For the purposes of this section, **adjacent property** shall mean both adjoining property and property separated by an alley. For further requirements, see Section 10-147.7 regarding bufferyard landscaping requirements.

j. **I District: Industrial District.**

1. In any commercial zoning district where a commercial building is to be located on a lot which is adjacent to property zoned for residential use, and in any industrial zoning district where an industrial building is to be located on a lot which is adjacent to property zoned for commercial or residential use, an opaque landscape screen, an opaque fence or screening having a minimum height of six (6) feet shall be provided by the commercial or industrial development along the lot lines of the adjacent property. Additionally, there shall be a minimum of a fifteen (15) foot green space between industrial and commercial or residential zoning districts to be provided by the industrial development. For the purposes of this section, **adjacent property** shall mean both adjoining property and property separated by an alley. For further requirements, see Section 10-147.7 regarding bufferyard landscaping requirements.

2. Uses Permitted.

a. The following uses, provided, where they are established within one hundred fifty (150) feet of a residence zone boundary line, they shall be conducted wholly within a building, except for the off-street loading or delivery vehicles incidental thereto.

i. Wholesaling establishments.

ii. Creameries and bottling plants.

iii. The manufacture, compounding, processing, packaging, or treatment of such products as bakery goods, candy, cosmetics, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries, and food products except fish and meat products, sauerkraut, vinegar, yeast, and the rendering or refining of fats and oils.

iv. The manufacture, compounding, assembling or treatment of articles, or merchandise from the following prepared materials; bone, cellophane, canvas, cloth, cork, feathers, felt fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semiprecious metals or stones, shell textiles, steel, tobacco, wood, yarns, and paint not employing a boiling process.

v. The manufacture of pottery or figurines or other similar ceramic products.

vi. The manufacture or maintenance of electric or neon signs, billiards, commercial advertising structures, light sheet metal products, including heating or ventilating ducts or equipment, cornices, eaves and the like.

vii. The manufacture of musical instruments, clocks, watches, toys, novelties, and rubber or metal stamps.

viii. Automobile assembling, painting, upholstering, rebuilding, reconditioning, truck repairing, or overhaul, tire retreading or recapping, battery manufacturing.

ix. Assembly of electrical appliances, electronic instruments and devices, radios, and phonographs, including the manufacture of small parts only, such as coils, condensers, transformers, crystal holders.

x. Blacksmith shop, manufacture of machine tools, manufacture of machinery including agricultural electrical machinery or equipment, office or store machines, equipment or supplies and the like, machine shop excluding punch presses over one hundred (100) tons rated capacity and drop hammers.

xi. Foundry casting lightweight non-ferrous metal not causing noxious fumes or odor.

xii. Laboratory, experimental, photo motion picture film or testing.

xiii. Retail auto Dealerships with no physical inventory on the premises. This use is limited to wholesale dealers holding a valid Town of Dyer business license for the calendar years 2014 and 2015 as of the date of this ordinance.

b. The following uses, provided, where they are within one hundred fifty (150) feet of a residence zone boundary line, they shall be conducted wholly within a building or within an area enclosed on all sides with a solid wall, compact evergreen screen or uniformly painted board fence, not less than six (6) feet in height, provided, however, that no such use shall provide for the manufacture, storage, or sale of any material classified as explosive by the Interstate Commerce Commission, Department of Transportation, or National Fire Protection Association.

i. Building material sales yard, including the sale of lumber, rock, sand and gravel as an incidental part of the main business.

ii. Contractor's equipment storage yard or plant or rental of equipment commonly used by contractors.

iii. Draying, freighting, or trucking yard or terminal.

iv. Grain, feed, or fuel yard and storage.

v. Public utility service yard or electrical receiving or transforming station.

vi. Plastic manufacture.

c. The following special exceptions, if their location is first approved by the Board of Zoning Appeals.

i. Bleaching or dyeing process.

ii. Boiler works.

iii. Brick, tile, terra cotta, or cinder block manufacture.

iv. Chemical manufacture.

v. Concrete or cement products manufacture.

vi. Gas storage.

vii. Glass manufacture.

viii. Feed mill.

ix. Furniture manufacture.

x. Paper or pulp manufacture.

xi. Planning mill.

xii. Sand or gravel-distribution or storage.

xiii. Stone cutting.

xiv. Any other manufacture or industrial operation whose location is determined by the Board to be in keeping with the intent and spirit of this ordinance.

xv. Sexually oriented businesses - see Section 10-168.

xvi. Tattoo parlor. An establishment whose primary activity consists of applying any form of tattoo or body art to customers for a fee.

2. Utility Requirements. Public sewer and water are required. All utilities, including electric and telephone, shall be underground. Public streets and sidewalks, unless specifically waived, shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Percentage of Lot Coverage. No more than sixty five (65%) percent of the lot may be covered with principal and accessory buildings.

4. Off-street Parking. See Section 10-132.

5. Off-street Loading. See Section 10-132.

6. Building Height Limit: Forty (40 feet).

k. In all RD, R-1, R-2, R-3, R-4 and R-5M Zoning Districts, the following uses, if permitted in said Zoning Districts under Subsections a., b., c., d., e. and f. above, shall be permitted by special exception only:

Cemeteries

Churches

Community centers

Group homes

Hospitals

Libraries and museums  
Nursing homes  
Schools  
Golf courses and country clubs

**I. Residential/Business.**

**1. Uses permitted.**

a. Single family residences in combination with a commercial or light industrial use.

2. Utility Requirements. Public sewer and water was required. All utilities including electric, cable and telephone, shall be underground. Public streets and sidewalks shall be provided and same shall meet Town specifications as set forth in the Town's Book of Standards.

3. Building Height Limit. Forty (40) feet.

4. Lot coverage. No more than fifty percent (50%) of a lot may be covered with buildings.

**m. Planned Unit Development.**

**1. Purpose and Conditions.**

The Planned Unit Development (hereinafter referred to as "PUD") provides for a variety of dwelling types to meet changing needs for future residents, and commercial and industrial buildings in order to secure greater convenience to the public through improved methods of merchandising and manufacturing, transportation, office management and distribution of services or products necessary to the public welfare. Because use and area requirements of this ordinance are primarily designed to apply to the traditional pattern of lot development and building arrangement generally prevailing within the Town, as well as building regulations pertaining to building size, yards, etc., the Town Council may establish a PUD by amending this ordinance and the accompanying Zoning Map, in accordance with the following procedure.

**2. Objectives.**

The following objectives may be obtained through the use of a Planned Unit Development District:

a. To permit a maximum choice in the types of environment available to the public by allowing a development that would not be possible under the strict application of other sections of this ordinance;

b. To promote a creative approach to the use of land and related physical facilities that results in better design and development with the inclusion of aesthetic amenities;

c. To combine and coordinate architectural styles, building forms and building relationships with a possible mixing of different urban uses in an innovative design;

d. To encourage a pattern of development to preserve natural vegetation, topographic and geologic features and environmentally appropriate features;

e. To provide for the prevention and/or control of soil erosion, surface flooding and the preservation of sub-surface water;

f. To create a method for the permanent preservation of common open space for the continued use and enjoyment of the residents of the development and the public at large, if appropriate;

g. To provide for more usable and suitably located recreation facilities, schools and other public and private facilities;

h. To promote more efficient use of the land resulting in more economic networks of utilities, streets and other facilities;

i. To encourage a method for the preservation of architectural and historic landmarks;

j. To encourage a land use which promotes the public health, safety, and welfare.

**3. General Design Criteria.**

Approval of a Planned Unit Development is contingent on satisfaction of the following general design criteria and the Plan Commission shall find each criterion to have been met prior to granting final approval:

a. That the tract to be developed is at least five (5) acres in the case of planned unit residential development of exclusively single-family dwelling units; at least two (2) acres in the case of planned unit residential development containing multi-family dwelling units; and at least five (5) acres for non-residential planned unit developments.

b. That the height of the proposed structures conforms to the maximum height set forth in the district regulations for the district that is most comparable to the proposed development in terms of zoning and use, as well as the surrounding district and uses.

c. That the overall density of the residential projects (defined as the number of living units per acre) may exceed the



district regulations for the district in which it is to be developed.

d. That the streets to be provided will assure a traffic circulation pattern which minimizes through traffic, allows adequate space for turning and parking and provides ample space for the turning and effective use of snow plows, garbage and fire trucks, loading and unloading and other pick-ups and deliveries without blocking traffic.

e. That the design of open spaces and housing in residential projects will provide both convenient ingress and egress and privacy.

f. That no structure will be more than two hundred (200) feet from a street, parking area, or other right-of-way on which a fire truck may be operated.

g. That adequate lighting will be provided.

h. That the final plans include the planting of adequate trees, shrubs and other landscaping where not already present.

i. That the design of the development is in harmony with existing surroundings and will not be detrimental to the character of the neighborhood.

j. That the applicant will bond himself and his contractor(s) to provide the improvements.

k. That adequate deed restrictions will be provided, running in favor of the municipality or an automatic homeowners association and individual homeowners for the proper maintenance, care and preservation of the exterior design, all common structures, facilities, utilities, access and open spaces and recreational areas by the original and all subsequent owners of property within the development.

l. That streets and rights-of-way shall meet the following standards:

i. Private street rights-of-way and pavements shall be constructed in conformity with the minimum street specifications prescribed by the Subdivision Control Ordinance.

ii. Private streets shall be maintained by the owners, or by the private organization, so that fire, police, health, school, and/or sanitation vehicles and public utility vehicles have adequate access. Adequate access includes an adequate turning area.

iii. Where public streets are required by the Plan Commission, they shall be dedicated and constructed in conformity with the minimum street specifications prescribed by the Subdivision Control Ordinance.

4. **Procedure.** The procedure for obtaining a change in a zoning district or undertaking development within a planned unit development district shall be as follows:

a. **Pre-application Conference.** The applicant must first attend a staff meeting with the Town's Zoning Administrator. The applicant shall submit a brief, written description of the proposed project to the Zoning Administrator explaining the intended character of the PUD, the benefits accruing to the community as a result of the PUD and the rationale behind the concept of the PUD, along with a sketch plan of the proposed project. At least fifteen (15) copies of the sketch plan must be submitted to the Zoning Administrator at least ten (10) days in advance of the staff meeting. After the staff meeting, the applicant may appear at a Plan Commission Study Session for Sketch Plan review; however, there must be at least ten (10) days between the staff meeting and the applicant's appearance at the Plan Commission Study Session. This period is for staff review and recommendations.

Fees shall be paid in accordance with the fee schedule contained in Section 10-119.

i. **Sketch Plan.** A drawing of the planned unit development shall be prepared at a scale that provides for a clear understanding of the intended development. The plan shall indicate the overall land use pattern, general circulation system, open space and park system and the major features of the development. The sketch plan does not require a detailed site plan of the buildings, roads, walks, etc. The plan should include:

1. Boundary lines or legal description.
2. Easements, general location and purpose.
3. Streets on or adjacent to the tract.
4. Proposed land use pattern.
5. Map date, name of development, name of site planner, north point, scale, date of preparation and acreage of site.

ii. **Site data.** A written explanation of the graphic elements of the plan including:

1. Description and quantity of land uses.
2. Description of residential units by type.
3. Number of dwelling units.
4. Estimated population.

5. Description of the development standards and design criteria.

iii. **Objectives.** A statement of planning objectives to be achieved by the Planned Unit Development. This statement shall include a description of the character of the proposed development and the rationale of the developer's plan.

iv. **Ownership.** A statement of the present and proposed ownership of all land within the project.

v. **Environment.** A preliminary statement identifying existing natural and environmental resources and the method to protect the physical amenities of the site, including information on:

1. Topography.
2. Flood plains and surface hydrology.
3. Vegetation and natural coverage.
4. Soils and subsurface conditions.
5. Geology.
6. Scenic vistas and views.

vi. **Utilities.** A preliminary engineering study providing information about existing and proposed sanitary sewer, storm sewer, water and other utilities necessary to adequately service the development.

vii. **Traffic.** A preliminary traffic analysis providing information on the existing road network and future improvements deemed necessary to service the development. This item is subject to the discretion of the Plan Commission.

viii. **Schedule.** A preliminary development schedule indicating the approximate dates when construction of various stages of the development can be expected to begin and be completed.

b. **Preliminary Development Hearing.** A public hearing shall be held upon written application of the developer to the Plan Commission. The developer shall submit fifteen (15) copies of a development plan to the Plan Commission at least sixty (60) days prior to the preliminary hearing. The purpose of preliminary hearing is to obtain preliminary approval and/or commitments from the Plan Commission that the plans, design and program that the developer intends to build and follow are acceptable and that the developer can obtain assurance that it can reasonably proceed with final detailed architecture, engineering, surveying, and landscape architecture in anticipation of final plan approval and subsequent construction.

i. **Preliminary Plan.** The preliminary plan shall show the overall plan for development, including grading, landscaping, exterior design and location of buildings, lots, all common structures, parking and open spaces, as follows:

1. Adequate provision shall be made for safe and efficient pedestrian and vehicular circulation within the site.
2. The scale of the plan should be appropriate to show the necessary detail with contours at a maximum of two (2) foot intervals and indicating any unusual topographical features.
3. The location, dimensions, and arrangements of all open spaces, yards, access ways, entrances, exits, off-street parking facilities, loading and unloading zones, pedestrian ways, width of roads, streets, and sidewalks, are adequate to provide for safe and efficient ingress and egress to and from public streets and highways serving the development.
4. Capacity of all areas to be used for automobile access, parking, loading, and unloading.
5. Location, planned uses, dimensions, gross floor area, building coverage, and approximate height of each building or other structures.
6. Location and arrangement of all areas devoted to planted lawns, trees, recreation, and similar purposes.
7. Provisions made for the location of existing or proposed sewage disposal, water supply, storm water drainage, parking lot lighting, and other utilities.

ii. **Detailed Development Plan.** A drawing of the Planned Unit Development shall be prepared at a scale of not less than one (1) inch equals one hundred (100) feet and shall show such designations as proposed streets (public and private), all buildings and their proposed uses, common open space, recreation facilities, parking areas, service areas, and other facilities to indicate the character of the proposed development. The submission may be composed of one (1) or more sheets and drawings which must include:

1. Boundary lines - bearing and distance.
2. Easements - location, width, and purpose.
3. Streets on and adjacent to the tract - street name, right-of-way width, existing or proposed centerline elevations, pavement type, walks, curbs, gutters, culverts, etc.
4. Utilities on and adjacent to the tract - location, size, and invert elevation of sanitary and storm sewers, location and size of water mains, location of gas lines, fire hydrants, electric and telephone lines, and street lights.
5. Ground elevations on the tract - for land that slopes less than one-half percent ( $\frac{1}{2}\%$ ), show one (1) foot contour; for land that slopes more than one-half percent ( $\frac{1}{2}\%$ ), show two (2) foot contour; also show spot elevations at all

breaks in grades, along all drainage channels or swales and at points of special significance.

6. Subsurface conditions on the tract - (if required by Plan Commission) locations and results of tests to ascertain subsurface soil, rock and ground water conditions, depth to ground water unless test pits are dry at a depth of five (5) feet.

7. Other conditions on tract - water courses, flood plains, margins, rock out-crop, wooded areas, isolated preservable trees (one (1) foot or more in diameter), houses, barns, accessory buildings and other significant features.

8. Other conditions on adjacent land, approximate directions and gradient of ground slope, including any embankments or retaining walls, character and location of major buildings, pipelines, railroads, power lines, towers, and other nonresidential land uses or adverse influences; owners of adjacent unplatted land - for adjacent platted land refer to subdivision by platter name and show approximate percent built-up, typical lot size, and dwelling type.

9. Zoning - show zoning districts on and adjacent to the tract.

10. Proposed public improvements - highways or other major improvements planned for future construction, on or near tract.

11. Open space - all parcels of land intended to be dedicated for public use or reserved for the use of all property owners with the purpose indicated.

12. Structures - general location, purpose, and height, in feet, of each building other than single family residences on individually platted lots.

13. Map date - name of development, name of site planner, northpoint preparation, and acreage of site.

14. Miscellaneous - such additional information as may be required by the Plan Commission.

iii. **Additional Documents.** In addition, the applicant shall also provide the following, together with its preliminary development plan:

1. A survey of the property, showing existing features of the property, including contours, building structures, trees over four (4) inches in trunk diameter, streets, utility rights-of-way and existing land use.

2. Preliminary drawings for buildings to be constructed in the current phase, including floor plans, exterior elevations and sections.

3. Engineering feasibility studies of any anticipated problems which might arise due to the proposed development as required by the Plan Commission.

4. A vicinity map showing the capacity and arrangement of utilities, streets, and thoroughfares.

5. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas.

6. An explanation of the character of the Planned Unit Development and the manner in which it has been planned to take advantage of the flexibility of regulations and referencing the general benefits that will accrue to the public as a result of Planned Unit Development.

7. A statement of planning objectives to be achieved by the Planned Unit Development. This statement should include description of the character of the proposed development and the rationale behind the assumption and choices of the developer.

8. A statement of present and proposed ownership of all land within the project.

9. Proposed agreements, provisions, or covenants which will govern the use, maintenance and continued protection of the Planned Unit Development and any of its common open spaces.

10. Information about the density of residential uses, including the number of dwelling units per acre, the number of dwelling units by type, and the number of buildings by type.

11. Non-residential use - a statement indicating the type and amount of ancillary and non-residential uses including the amount of common open spaces.

12. Preliminary plans for plant materials, earth sculpturing, berming and aesthetic features.

13. Facilities plans for roads, sanitary sewer, water supply system, storm drainage, lighting program, and sidewalks.

14. Traffic analysis on the adequacy of the local transportation and thoroughfare system to handle anticipated traffic volume generated by Planned Unit Development. Such analysis should also include the adequacy of the internal vehicular circulation pattern.

iv. **Review.** The Plan Commission shall review the application and proposed plans with respect to whether or not the location, plan and character of development is in harmony with the long range development plan of the Town and its various elements. In the event that the original application is denied, the applicant must resubmit an original application to receive consideration. In the event the Plan Commission approves an application or tentatively approves an application with suggestions for revision, the applicant shall submit a final plan for final approval within six (6) months. After six (6) months,

the applicant must resubmit an original application in order to be eligible for further consideration.

v. **Conditions.** Prior to the granting of any development plan, the Plan Commission may recommend and/or require such conditions and restrictions upon the establishment, location, design, layout, construction, maintenance, beautification, aesthetics, operation and other elements of the planned unit development as deemed necessary for the protection of the public interest, improvement of the development, protection of the adjacent area and to secure compliance with the standards specified above. In all cases in which development plans are granted, the Plan Commission shall require such evidence and guarantees as it may deem necessary as proof that the conditions required in connection therewith will be complied with for the improvement of the development, protection of the adjacent area and to secure compliance with the standards specified.

vi. **Findings.** The Plan Commission, after determining that all the requirements of the zoning ordinance pertaining to PUD districts have been met, shall recommend the preliminary approval, approval with modifications, or disapproval of the development plan. The Plan Commission shall enter its reasons for such action in its records. The Plan Commission may recommend the establishment of a PUD district provided that it finds the facts submitted with the development plan establish that:

1. The uses proposed will not be detrimental to present and potential surrounding uses, but will have a beneficial effect.
2. Any amendment to the requirements of this section is warranted by the design and amenities incorporated in the development plan.
3. Land surrounding the proposed development either can be planned in coordination with the proposed development or will be compatible in use.
4. The proposed change to a PUD district is in conformance with the general intent of the comprehensive master plan.
5. Existing and proposed utility services are suitable and adequate to accommodate anticipated traffic within the proposed district and in the vicinity of the proposed district.
6. Existing and proposed utility services are adequate for the proposed development, and all buildings are served by a central sewage disposal system, public water supply, and public utilities.
7. Each phase of the proposed development, as it is proposed to be completed, contains at least the minimum amount of required parking spaces, landscape and utility areas necessary for creating and sustaining a desirable and stable environment, and that each phase will meet the foregoing conditions and intent of this ordinance at completion of each phase.
8. The development will consist of a harmonious grouping of buildings or other structures, adequate service, parking, and open spaces, planned as a single and common operating and maintenance unit, as applicable.

c. **Final Development Plan.** The final development plan shall be in general conformance with the approved preliminary development plan.

i. **Final Detailed Plan.** A final Planned Unit Development Plan suitable for recording with the County Auditor's Office shall be prepared. The purpose of the final plan is to designate with particularity the land subdivided into conventional lots, as well as the division of other land, not so classified, into common open areas and building areas. The final plan shall include:

1. An accurate legal description of the entire area under immediate development within the Planned Unit Development.
2. A planned unit development plan of all lands which are a part of the final plan being submitted, and meeting all the requirements for a final plan. If lands which are a part of the final plan are to be subdivided, then a subdivision plan is also required.
3. An accurate legal description of each separate unsubdivided use area including common open space.
4. Certificates, seals and signatures required for dedication of lands, and recording the document.
5. Tabulation on separate unsubdivided use area, including land area, number of buildings, number of dwelling units, and dwelling units per acre.

ii. **Common Open Space Documents.** All common open space shall be either conveyed to municipal or public corporations, conveyed to a not-for-profit corporation or entity established for the purpose of benefiting the owners and residents of the Planned Unit Development, or retained by the developer with legally binding guarantees, in a form approved by the Town Attorney, verifying that the common open area will be permanently preserved as open area. All land conveyed to a not-for-profit corporation or like entity shall be subject to the right of said corporation to impose a legally enforceable lien for the maintenance and improvement of common open space.

iii. **Public Facilities.** All public facilities and improvements made necessary as a result of the Planned Unit Development shall be either constructed in advance of the approval of the final plan or a bond shall be posted by the developer to guarantee construction of the required improvements. The bond shall be payable to the Town of Dyer and shall

be sufficient to cover the total cost of the improvements plus ten percent (10%). Detailed construction plans shall be submitted for all public facilities to be built.

iv. **Construction Plans.** Detailed plans shall be submitted for the design, construction, and installation of site amenities including buildings, landscaping, lakes and other site improvements.

v. **Construction Schedule.** A final construction schedule shall be submitted for that portion of the Planned Unit Development for which approval is being requested.

vi. **Guarantee Deposit.** A deposit shall be made to the Town of Dyer in the form of cash, letter of credit of indefinite or renewable term, or maintenance bond approved by the Plan Commission, in a form acceptable to the Town Attorney equal to fifteen percent (15%) of the estimated cost of public facility installation. This deposit shall be a guarantee of satisfactory performance of the facilities constructed within the Planned Unit Development and shall be held by the Town for a period of two (2) years from the date of acceptance of the facilities by the Town. After such two (2) years, the deposit shall be refunded if no defects have developed. If defects have developed, within the two (2) year period, then the balance of such deposit shall be refunded after reimbursement to the Town for amounts expended in correcting defective facilities.

vii. **Delinquent Taxes.** A certificate shall be furnished from the appropriate county official that no delinquent taxes exist and that any and all special assessments constituting a lien on the whole or any part of the title have been paid.

viii. **Covenants.** Final agreements, provisions, or covenants which govern the use, maintenance, and continued protection of the Planned Unit Development shall be recorded at the same time as the final Planned Unit Development Plan.

d. **Recording of Final Plat.** The final plat shall be recorded in accordance with the requirements of Lake County, Indiana.

e. **Modifications.** The Planned Unit Development project shall be developed only in accordance with the approved and recorded final plan and all supporting data. The recorded final plan and supporting data, together with all recorded amendments shall be binding on the applicants, their successors, grantees, and assigns and shall limit and control the use of premises and location of structures in the Planned Unit Development set forth therein. Changes to the recorded Planned Unit Development shall be made in accordance with the following procedure:

i. **Major Changes.** Changes which alter the concept or intent of the Planned Unit Development, including changes in density, changes in the height of buildings, reduction of proposed open space, changes in total bedroom counts, changes in the development schedule, changes in the road standards, or changes in the final governing agreements, provisions or covenants, or other changes, may be approved only by submission and reconsideration of a new preliminary Planned Unit Development Plan and supporting data and following the preliminary procedure.

ii. **Minor Changes.** The Plan Commission may, in accordance with procedure established in their rules, approve minor changes in the Planned Unit Development which do not change the concept or intent of the development. Minor changes shall be any change not defined as a major change, at the discretion of the Plan Commission.

f. **Conditions and Guarantees.** Prior to the granting of any Planned Unit Development District, the Plan Commission may recommend such conditions and restrictions upon the establishment, design, location, lay-out, height, density, construction, aesthetics operation or other elements of the Planned Unit Development as deemed necessary for the protection of the adjacent area, and to secure compliance with the standards specified in this ordinance.

n. **Special Use District.** See section 10-155.

(Ord. No. 2007-33, 12-27-07; Am. Ord. No. 2015-12, 6-15-15)

## **Sec. 10-132 Off-Street Parking Lots and Loading Areas.**

### **a. General Requirements.**

1. Off-street parking for other than residential uses shall be either on the same lot or within three hundred (300) feet of the property on which the building it is intended to serve is located, measured from the nearest point of the property on which the building it is intended to serve is located to the nearest point of the off-street parking lot.

2. No parking lot shall be constructed or reconstructed unless and until a Certificate of Zoning Compliance is issued. Applications for a certificate shall be submitted with two (2) copies of plans for the development and construction of the parking lot.

3. Adequate ingress to the parking lot shall be provided and all parking spaces shall be provided adequate access by means of maneuvering lanes. Provision of adequate ingress and egress shall receive review and approval of the Municipal Engineer or such other officers as may be designated by the Plan Commission.

4. All open off-street automobile parking areas and all off-street loading areas, except one (1) and two (2) family residential and mobile home residential areas, either created or redesigned and rebuilt subsequent to the adoption of this ordinance shall be improved with an eight (8) inch stone base, a two (2) inch paved surface, as a minimum, marked with appropriate stripes and lines to indicate parking stalls and circulation ways.

5. All open off-street automobile parking and drives being used for one (1) to four (4) family dwellings either created or redesigned and rebuilt subsequent to the adoption of this ordinance shall be improved with paved concrete, asphalt paving, or paving brick.

6. All open off-street parking in B-1, B-2, B-3 and I zoning districts shall have not less than a ten (10) foot landscaped (green space) buffer between said parking areas and any public right-of-way and not less than a fifteen (15) foot landscaped (green space) buffer between said parking and any adjoining residential property. Driveways shall not be allowed to encroach into the required fifteen (15) foot landscaped (green space) buffer.

7. Adjacent parking lots shall have vehicular and pedestrian connections.

8. Shared parking arrangements shall be encouraged. In the event that two (2) or more businesses elect to share parking lots in an effort to meet these parking requirements and reduce impervious surfaces in the community the following standards shall apply.

A. Each business shall provide at least seventy-five percent (75% ) of its required parking spaces on its own lot.

B. Upon providing proof of a written agreement to share parking spaces on adjacent parking lots or parking lots within three hundred (300) feet of the property of a given building in keeping with Section 10-132 a. 1., each business may be credited with one-half (½) of the parking spaces on the adjacent lot in an effort to meet its total parking spaces requirement.

b. **Off-Street Parking Requirements.** The following table of parking requirements for various uses shall be applied to all new developments. In the event a use is not listed on the following table, the Zoning Administrator shall apply a use from the table which he/she shall deem to be closest. Allocation of said parking areas shall be indicated on the plans required for obtaining a Certificate of Zoning Compliance. Each parking space shall be required to be a minimum of one hundred sixty-two (162) square feet (9' x 18'), which square footage shall not include the access lane.

<b>USES</b>	<b>PARKING REQUIREMENTS</b>
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Single-Family Residential	2 spaces per dwelling unit.
Elementary and Middle or Jr. High Schools	1 space per employee, plus auditorium, gym, and stadium requirements, if any.
Senior High School	1 space per employee, plus 1 space per 5 students, plus auditorium, gym, and stadium requirements, if any.
Libraries	1 space per 500 square feet of gross floor space.
Auditoriums (School)	1 space per 3 seats.
School Gyms, Stadiums, Etc.	1 space per 3 seats.
Nursing and Convalescent Homes	1 space per 3 beds.
Hospitals	1 space per 2 beds, plus 1 space per employee on largest shift, plus 1 space per doctor on staff.
Private Clubs	1 space per lodging room plus spaces equal to 50% of capacity in persons.
Non-Commercial Community Center	Parking spaces equal to 30% of capacity in persons.
Restaurants and Taverns	Spaces equal to 50% of capacity in persons plus 1 space per employee on largest shift.

<b>USES</b>	<b>PARKING REQUIREMENTS</b>
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Restaurants with Drive-Thru Service	Spaces equal to 50% of capacity in persons.
Churches and Places of Public Assembly	1 space per 4 seats.
Motels and Hotels	1 space per dwelling unit plus spaces equal to 50% of capacity in persons of meeting rooms plus spaces equal to 50% of capacity in persons for any restaurant plus 1 space per employee on largest shift.
Multi-Family Residential	2 spaces per dwelling unit plus 1 space for each bedroom in excess of 2.
Service Stations	1 space per employee plus 1 space for manager plus 2 spaces for each service bay.
Bowling Alleys	4 spaces per alley
Pool Halls, Dance Halls, Pools, Skating Rinks, Etc.	Parking spaces equal to 50% of capacity in persons.
Auto Sales	1 space per 1,000 square feet.
Indoor Theater	1 space per 3 seats.
Funeral Parlors	50% of capacity.
Animal Hospitals and Kennels	1 space per employee plus 1 space per exam room.
Cartage and Express Facilities	1 space per vehicle operated plus 1 space per employee.
Contractor or Construction Office	1 space per employee.
General Commercial District	1 space per 200 square feet of gross floor area.
Highway Commercial District	1 space per 200 square feet of gross floor area.

Convenience Commercial District      1 space per 200 square feet of gross floor area.

Industrial District      1 space per 1,000 square feet.

c. **Loading Requirements.** In any Commercial or Industrial District, sufficient space for the loading or unloading of vehicles shall be provided on the lot in connection with any commercial or industrial use so that the public street shall at all times be free and unobstructed to the passage of vehicular and pedestrian traffic. Such space shall be provided as follows:

Gross Floor Area	Loading and unloading (square feet) space required in terms of square feet of gross floor area
0 - 2,000	None
2,001-15,000	1 space
15,001 and above	2 spaces

d. All spaces shall be at least ten (10) feet x fifty (50) feet, or five hundred (500) square feet in area, with a clearance of at least fourteen (14) feet high.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-133 Administration and Enforcement - Building Permits and Certificates of Zoning Compliance.**

a. **Administration and Enforcement.** A Building Commissioner and a Zoning Administrator, both of which shall be designated by the Town Council of the Town, shall administer and enforce this ordinance. Each may be provided with the assistance of such other person as the Council may direct.

If the administrative officials shall find that any of the provisions of this ordinance are being violated, they either shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. Either shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

b. **Building Permits Required.** No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefor, issued by the Building Commissioner. No building permit shall be issued by the Building Commissioner except in conformity with the provisions of this ordinance, unless he receives written order from the Board of Zoning Appeals in the form of an administrative review, special exception, or variance as provided by this ordinance.

c. **Application for Building Permit.** No permit for erection, alteration, moving, or repair of any structure or installation of any parking facility, shall be issued until an application has been made for a Certificate of Zoning Compliance and the issuance of a Temporary Certificate of Zoning Compliance as hereinafter set forth. No building permit except those issued for parking facilities, residential accessory buildings and for additions to existing residential single family structures, swimming pools, fences, and signs shall be issued except on a subdivided lot. All applications for building permits shall be accompanied by a Temporary Certificate of Zoning Compliance, plans in triplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building, alteration, or addition. The application shall include such other information as lawfully may be required by the Building Commissioner, including existing or proposed building, alteration, or addition, existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance.

One (1) copy of the plans shall be returned to the applicant by the Building Commissioner, after he or she shall have marked such copy either approved or disapproved and attested to same by his or her signature on such copy. The original of the plans, similarly marked, shall be retained by the Building Commissioner.

d. **Certificates of Zoning Compliance for New, Altered, or Non-Conforming Uses.** It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued therefor by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this ordinance. Prior to the issuance of a Certificate of Zoning Compliance, the Zoning Administrator, through the office of the Building Commissioner, shall ensure compliance with the Sewer Use Ordinance of the Town of Dyer. The Clerk- Treasurer of the Town of Dyer is prohibited from issuing an Occupancy Permit, or authorizing the use of or connection to the Town's water utility or sewer utility without the submission of a temporary or final Certificate of Zoning Compliance.

A Final Certificate of Zoning Compliance shall be issued in conformity with the provisions of this ordinance only upon completion of the work.

A Temporary Certificate of Zoning Compliance may be issued by the Zoning Administrator for a period not exceed twelve (12) months during construction, alteration, or partial occupancy of a building pending its completion, provided that such temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and public.



The Clerk-Treasurer shall maintain a record of all Certificates of Zoning Compliance, and a copy shall be furnished upon request to any person.

Failure to obtain a Certificate of Zoning Compliance shall be a violation of this ordinance and punishable under Section 10-142.

e. **Expiration of Improvement Location Permit.** If the work described in any improvement location permit has not begun within ninety (90) days from the date of issuance thereof, said permit shall expire and it shall be canceled by the Building Commissioner/Building Inspector. Written notice thereof shall be given to the persons affected, including the Town Clerk-Treasurer.

If the work described in any improvement location permit with a construction value of less than six hundred thousand dollars (\$600,000.00), as approved by the Building Commissioner/Building Inspector, has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be canceled by the Building Commissioner/Building Inspector, and written notice thereof shall be given to the persons affected, including the Town Clerk-Treasurer, together with notice to the permit holder that further work as described in the expired/canceled permit shall not proceed unless a new improvement location permit has been obtained. The cost of the new improvement location permit shall be predicated upon the cost to complete the work described in the new improvement location permit application in the same manner as the original improvement location permit cost was determined.

In the event that the work described in an improvement location permit exceeds six hundred thousand dollars (\$600,000.00) of construction cost, as approved by the Building Commissioner/Building Inspector, said improvement location permit shall be valid for a period of two (2) years from the date of issuance. The date of issuance shall be defined as the date on which the improvement location permit becomes available for pick-up at the Clerk-Treasurer's Office in the Dyer Town Hall.

f. **Construction and Use to be as Provided in Applications, Plans, Permits, and Certificates of Zoning Compliance.** Building permits or Certificates of Zoning Compliance issued on the basis of plans and applications approved by the Building Commissioner and Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance, and punishable as provided by Section 10-142 hereof.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-134 Board of Zoning Appeals - Establishment and Procedure.**

A Board of Zoning Appeals is established, which shall consist of five (5) members, two (2) of whom must be members of the Plan Commission, to be appointed by the Town Council, each for a term of four (4) years. Members of the Board of Zoning Appeals may be removed from office by the Town Council for cause upon written charges and after public hearing. Vacancies shall be filled by resolution of the Town Council for the unexpired term of the member affected.

a. **Proceedings of the Board of Zoning Appeals.** The Board of Zoning Appeals shall adopt the rules necessary to the conduct of its affairs and in keeping with the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The Board of Zoning Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

b. **Hearings; Appeals; Notice.** Appeals to the Board of Zoning Appeals concerning the interpretation or administration of this ordinance, as amended from time to time, may be taken by any person aggrieved by an order of the Plan Commission, Building Commissioner, or Zoning Administrator, or by any officer of the governing body of the Town affected by any decision of the administrative officials. Such appeals shall be taken within a reasonable time, not to exceed thirty (30) days or such lesser period as may be provided by the rules of the Board, by filing with the administrative official and with the Board of Zoning Appeals a notice of appeal specifying the grounds thereof. The administrative official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

The Board of Zoning Appeals shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest as set forth in Section 10-135b.2. hereafter, and decide the same within a reasonable time.

At the hearing, any party may appear in person or by agent or attorney. The public hearing shall be held at the place and time specified. A party seeking to appear by agent or attorney at any hearing as provided herein shall submit to the body before whom the hearing is to be held, prior to the hearing, a letter of authorization or properly executed power of attorney authorizing the agent or attorney to appear at the hearing on behalf of the party.

c. **Stay of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Zoning Appeals after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Zoning Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is



taken and on due cause shown.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-135 The Board of Zoning Appeals - Powers and Duties.**

The Board of Zoning Appeals shall have the following powers and duties:

- a. **Administrative Review.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance.
- b. **Special Exceptions - Conditions Governing Applications - Procedures.** To hear, and make recommendations to the Town Council on, such special exceptions as the Board of Zoning Appeals is specifically authorized to hear by the terms of this ordinance and in compliance with state law; to decide such questions as are involved in determining whether special exception should be granted; and to make recommendations to the Town Council on special exceptions with such conditions and safeguards as are appropriate under this ordinance. A special exception shall not be considered by the Board of Zoning Appeals unless and until:
  1. A written application for a special exception is submitted indicating the section of this ordinance, as amended from time to time, under which the special exception is sought and stating the grounds on which it is requested.
  2. Notice shall be given by publication in accordance with the requirements of *C.*, § 5-3-1, *et seq.* Additional notice of such hearings shall be given to all interested parties. The Board of Zoning Appeals shall, by rule, determine the following:
    - (1) Who are interested parties;
    - (2) How notice is to be given to them; and
    - (3) Who is required to give the notice.
  3. The public hearing shall be held at the place and time specified. A party seeking to appear by agent or attorney at any hearing as provided herein shall submit to the body before whom the hearing is to be held, prior to the hearing, a letter of authorization or properly executed power of attorney authorizing the agent or attorney to appear at the hearing on behalf of the party.
  4. The Board of Zoning Appeals shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public health, safety, welfare or morals of the Town.
  5. Before any special exception shall issue, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following where applicable:
    - a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
    - b. Off-street parking and loading areas where required, with particular attention to the items in a. above and the economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district.
    - c. Refuse and service areas, with particular reference to the items in a. and b. above.
    - d. Utilities, with reference to locations availability, and compatibility.
    - e. Screening and buffering with reference to type, dimension, and character.
    - f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
    - g. Required yards and other open spaces.
    - h. General compatibility with adjacent properties and other property in the district.
- c. **Variances – Conditions Governing Applications – Procedures.** To authorize upon appeal in specific cases such variances of development standards or use from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. A variance from the terms of this ordinance shall not be granted by the Board of Zoning Appeals unless and until:
  1. A written application for a development standards or use variance is submitted indicating the section of this ordinance, as amended from time to time, under which the variance is sought and stating the grounds on which it is requested. The written application for a development standards variance shall demonstrate:
    - a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
    - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
    - c. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the

property.

2. The written application for a use variance shall demonstrate:
  - a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
  - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
  - c. The need for the variance arises from some condition peculiar to the property involved.
  - d. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.
  - e. The approval does not interfere substantially with the comprehensive plan of the Town of Dyer adopted under *f.C.*, 36-7-4-500, as amended from time to time.
3. No non-conforming use of neighboring lands structures, or buildings in the same district, and no permitted or non-conforming use of lands, strictures, or buildings in other districts shall be considered for the issuance of a variance.
4. The Board of Zoning Appeals shall hold a public hearing to consider an application for development standards or use variance. Notice of public hearing shall be given as in Section 10-135b.2..
5. The public hearing shall be held at the place and time specified. A party seeking to appear by agent or attorney at any hearing as provided herein shall submit to the body before whom the hearing is to be held, prior to the hearing, a letter of authorization or properly executed power of attorney authorizing the agent or attorney to appear at the hearing on behalf of the party.
6. The Board of Zoning Appeals shall make written findings using the criteria as set forth in Sections 10-135(c)1. and 2.
7. In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this ordinance, as amended from time to time. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 10-142, as amended from time to time.
8. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow any use expressly or by implication prohibited by the terms of this ordinance in said district.

d. **Board has Powers of Administrative Official on Appeals – Reversing Decision of Administrative Official.** In exercising the above mentioned powers, the Board of Zoning Appeals may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the administrative official from who the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-136 Appeals From the Board of Zoning Appeals.**

Any person or persons, or any board or bureau of the Town aggrieved by any decision of the Board of Zoning Appeals may seek review by a court of record of such decision, in the manner provided by the laws of the State of Indiana.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-137 Duties of Administrative Official, Board of Zoning Appeals, and Courts on Matters of Appeal.**

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrative official, and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the administrative official, and that recourse from the decisions of the Board of Zoning Appeals shall be to the courts as provided by law.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-138 Schedule of Fees, Charges, and Expenses.**

The Town Council shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this ordinance. The schedule of fees shall be posted in the Office of the Administrative Official, and may be altered or amended only by the Town Council.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-139 Amendments.**

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed, provided however that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-140 Provisions of Ordinance Declared to be Minimum Requirements.**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals or general welfare. Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards shall govern. (Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-141 Complaints Regarding Violations.**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the administrative official. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this ordinance.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-142 Penalties for Violation.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grant of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than two thousand five hundred dollars (\$2,500.00) and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-143 Severability Clause.**

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-144 Repeal of Conflicting Ordinances - Effective Date.**

All ordinances or parts of ordinances in conflict with this zoning ordinance, or inconsistent with the provisions of this ordinance, are hereby repealed to the extent necessary to give this ordinance full force and effect.

This Ordinance shall become effective on passage.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-145 Reserved for Future Use.**

#### **Sec. 10-146 Sign Regulations.**

##### **Sec. 10-146.1 General Provisions.**

This is an ordinance regulating the construction, erection and placement of signs in the Town of Dyer, Lake County, Indiana.

1. It shall be unlawful for any person, firm or corporation to erect, repair (other than ordinary and necessary maintenance), alter or relocate, within the Town of Dyer, (except for a simple name change) any permanent sign (except for nameplate and occupant signs as hereinafter allowed) or any temporary sign greater than twelve (12) square feet, and temporary commercial signs as identified in Section 10-146.6 (g - l) and (n - p) and (s), or advertising structure as defined in this ordinance, without first obtaining a building permit and making payment of the fee required by ordinance. All illuminated signs shall, in addition, be subject to the provisions of the Electrical Code of the Town and the permit fees required thereunder.

Additions to existing signs shall require that the applicant provide a picture of the existing sign as well as a picture of the proposed addition to the existing sign.

2. Application for building permits shall be made upon forms provided by the Building Department, and shall contain or have attached thereto the following information:

- a. Name, address and telephone number of the applicant and their relationship to the property;
- b. Location of building, structure, or lot to which or upon which the sign or other advertising structure is to be attached or erected;
- c. Two (2) permanent prints or ink drawings of the plans and specifications, and method of construction and attachment to the building or in the ground and showing the position of the sign or other advertising structure in relation to nearby buildings, structures and lot lines;
- d. When deemed necessary by the Building Inspector, because of wind loads, live and or dead loads, calculations prepared by a registered professional engineer in the State of Indiana indicating that the sign and supports are adequate shall be submitted;
- e. Name of person, firm, corporation, or association erecting structures;
- f. Written consent of the owner of the building, structure, or land to which or on which the sign is to be erected;
- g. Any electrical permit required and issued for said sign;
- h. Insurance policy or bond (on contractor) as required by ordinance;
- i. Such other information as the Building Inspector shall require to show compliance with this section and all other laws and ordinances of the Town.

3. The applicant for a permit for erection of a sign or other advertising structure in which electrical wiring and/or connections are to be used shall be submitted to the Electrical Inspector. The Electrical Inspector shall determine if the wiring and/or connections comply with the Electrical Code of the Town.

4. It shall be the duty of the Zoning Administrator and/or the Building Inspector, upon the filing of an application for a building permit, to examine such plans, specifications, other data and/or the premises upon which it is proposed to erect the sign or other advertising structure is in compliance with all the requirements of this section and all other laws and ordinances of the Town, then issue the building permit. If the work authorized under a building permit has not been completed within six (6) months after the date of issuance, said permit shall become null and void.

5. If the Zoning Administrator or designee shall find that any sign or other advertising structure regulated herein is unsafe or insecure, or is a menace to the public, or has been constructed or erected or is being maintained in violation of the provisions of this section, or is no longer advertising a bona fide business conducted or product sold on the premises where the sign is located, he shall give written notice to the permittee thereof. If the permittee fails to remove or alter the structure so as to comply with the standards herein set forth within three (3) days after such notice, such sign or other advertising structure may be removed or altered to comply by the Zoning Administrator or designee at the expense of the permittee. The Zoning Administrator shall refuse to issue a permit to any permittee or owner who refuses to pay costs so assessed. The Zoning Administrator or designee may cause any sign or other advertising structure which is an immediate peril to person or property to be removed summarily and without notice.

6. Every sign or other advertising structure hereafter erected shall have printed in a conspicuous place thereon, in letters not less than one (1) inch high, the date of erection and the permit number.

7. The owner of any sign as defined by this ordinance and regulated by this section shall properly maintain all parts and supports of said sign.

8. All signs and other advertising structures shall be designed and constructed to withstand a wind pressure of not less than twenty (20) pounds per square foot of area.

9. All size limitations listed elsewhere in this section shall be for net surface area per display surface unless otherwise indicated. The gross area for all signs plus the supporting structures shall in no case exceed two hundred percent (200%) of the net surface area permitted.

10. No sign shall be placed in such a manner that it would block or obscure the vision of the driver of a motor vehicle stopped at a stop sign, traffic light, or entrance to a public street for a distance of two hundred (200) feet in any direction in which there is oncoming traffic.

11. No sign shall be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window, fire escape, or public walkway.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-146.2 Prohibited Signs.**

The following signs are expressly prohibited for erection, construction, maintenance, repair, alteration, location, or relocation, within the Town of Dyer except as exempt under Section 10-146.8.

1. Flashing signs - signs which flash in excess of six (6) times per minute except for electronic text messaging centers.
2. Moving signs - signs which move or rotate more than one (1) revolution per minute.

3. Signs displaying lewd, illegal, or immoral matter as defined in Ordinance 92-9, The Dyer Nuisance Ordinance. (See Section 6-64)

4. Any sign advertising a business, product, or service, not available on the premises where the sign is located except as permitted in section 10-146.3 Off Premises signs.

5. Signs identifying past services performed on a building or to premises, e.g., "Roof by ...".

6. Signs on fences, utility poles, street lights or trees.

7. Signs in public rights-of-way except in the case where a dividing "island" exists between two (2) sections of streets as long as the ability to see oncoming traffic is not restricted by said sign. Also, except for traffic signs erected by a governmental unit such as a stop sign, a speed limit sign, railroad crossing, etc.

8. Signs which are confusingly similar or resemble or in any way imitate any official marker erected by the Town, state, or other governmental unit or agency, or which by reason of position, shape, or color would confuse or conflict with the proper functioning of any traffic sign or signal, or railroad device.

9. Signs on any property without the consent of the party having the right of present possession.

10. Signs extending over or placed upon a public sidewalk, alley, or right-of-way except as permitted in Section 10-146.12.

11. All signs not specifically allowed by the provisions of this section.

12. Billboards except as allowed by special exception by the Board of Zoning Appeals.

If the Board of Zoning Appeals grants said special exception it shall find that a billboard shall not be permitted within three hundred (300) feet of a residential district, street intersection, or railroad crossing. There shall be a minimum of eight hundred (800) feet between billboards on the same side of a street or highway, and shall not be closer than twenty (20) feet to a dedicated right-of-way. A billboard shall not be permitted within two hundred (200) feet of an existing building. In the event a building is constructed within two hundred (200) feet of a billboard during the term of the billboard permit, the billboard shall be removed within twelve (12) months of the date of issuance of an occupancy permit relevant to the building so constructed. Billboards shall only be permitted in B-3 and I zoning districts. A billboard permit must comply with the above restrictions and once issued, shall be subject to annual renewal upon payment of the permit fee and review by the Zoning Administrator.

13. Roof signs-except as allowed by special exception by the Board of Zoning Appeals.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-146.3 Off Premises Signs.**

Off premises signs are signs which indicate only the location and direction to a business. Such signs must be located within one-half (½) mile of the business. Further, such signs shall be limited to thirty-two (32) square feet. (This section replaces the previous section which was Billboards.)

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-146.4 Restrictions.**

In addition to all other provisions and restrictions of this section, the following signs shall conform as follows:

#### **1. Freestanding signs.**

a. **Location - Height and Area Limitations.** It shall be unlawful to erect any freestanding sign in the total height of which is greater than twenty (20) feet above the level of the street upon which the sign faces, or above the adjoining ground level if such ground level is below the street level. A freestanding sign shall not exceed one hundred (100) square feet in display area per side.

b. **Placement.** A freestanding sign shall not be nearer than two (2) feet to any building or structure, or nearer than twenty (20) feet to any other free standing sign and must be set back at least five (5) feet from any public right-of-way.

c. **Display Surface.** A freestanding sign having more than one (1) display surface shall be limited to a net area of one hundred (100) square feet on any display plane; provided however, if the internal angle between the two (2) planes is more than ninety degrees (90°), the adjoining planes shall be considered as one (1) plane. The total of all display surfaces shall not exceed two hundred (200) square feet.

d. **Erection, Bracing, Anchorage, and Supports.** A freestanding sign shall be securely built, constructed and erected upon posts and standards sunk at least three and one-half (3½) feet below the natural surface of the ground and shall be adequately braced to prevent overturning.

e. **Structures, Etc., To Be Treated With An Appropriate Wood Preservative.** All posts, anchors, and bracing of wood which rest upon or enter into the ground shall be treated to protect them from moisture by creosoting or other appropriate method of protection.

f. **Illuminated Signs.** All illuminated freestanding signs shall also conform to the provisions below in paragraphs 3 and



4 as well as to the provisions in the Exterior Lighting Regulations Ordinance.

2. **Wall Mounted Signs.** A wall mounted sign shall be safely and securely attached to the building wall. In no case shall any wall mounted sign be secured with wire, strips of wood, or nails. A wall mounted sign shall be limited to two (2) square feet in area for each one (1) linear foot of frontage of the structure on which it is to be placed for buildings/businesses located up to fifty (50) feet from the public right-of-way and three (3) square feet in area for each one (1) linear foot of frontage of the structure on which it is to be placed for buildings/businesses located more than fifty (50) feet from the public right-of-way. An illuminated wall mounted sign shall also conform to the provisions in paragraphs 3 and 4.

3. **Internally Illuminated Signs.**

a. In no case shall the medium of illumination be visible.

b. In no case shall the lighting intensity exceed the limit of thirty (30) footcandles measured with a standard light meter perpendicular to the face of the sign at a distance equal to the narrower dimension of the sign, whether it be the height or the width.

4. **Externally Illuminated Signs.**

a. The average level of illumination on the vertical surface of the sign shall not exceed 10.0 footcandles, and the ratio of average to minimum illumination shall not exceed 2:1. The average reading is determined by taking readings at the four (4) corners or equivalent and the center of the sign .

b. Lighting fixtures illuminating signs shall be located, aimed, and shielded so that light is directed only onto the sign facade and shall not extend beyond the edges of the sign. Lighting fixtures shall not be aimed toward adjacent streets, roads, or properties.

c. Light fixtures illuminating signs shall be of a type such that the light source is not directly visible from adjacent streets roads, or properties.

d. Fixtures used to illuminate signs shall be top-mounted and directed below the horizontal.

e. The light reflectance shall be measured with a standard light meter held one (1) foot perpendicular from the surface of the sign.

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-146.5 Signs in Residential Districts.**

1. In residential districts signs shall be limited to a maximum of fifty (50) feet in gross surface area. Signs which measure twelve (12) square feet or less in gross surface area shall not be required to obtain a permit unless such sign is illuminated in which case it would be required to obtain an electrical permit. Temporary signs as defined in this ordinance, and which measure twelve (12) square feet or less in gross surface area are also exempt from the requirement to obtain a permit. Signs used for the purpose of advertising an allowed home operation shall be limited to one (1) square foot in size. All signs must be at least five (5) feet from any property line and cannot overhang a public street, alley or sidewalk. Signs in residential zoning districts shall be limited to a maximum of ten (10) feet in height.

2. The following signs are hereby expressly prohibited in residential districts for erection, maintenance, construction, repair, alteration, location or relocation:

a. Roof signs.

b. Signs advertising products or services for sale, use or rent, except the subject real estate which is itself for sale or rent (see Section 10-146.11(8) Temporary Signs), except as otherwise allowed.

c. Pennants - except in connection with a yard/garage sale and only for the duration of the sale.

d. Streamers - except in connection with a yard/garage sale and only for the duration of the sale.

e. Signs with neon lights.

f. Signs with interchangeable letters unless such changeable board is enclosed behind a lockable transparent door.

g. Prohibited signs as defined in section 10-146.2.

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-146.6 Signs in B-2, B-3 and I Districts.**

In B-2, B-3, and I districts, the following regulations shall apply:

1. **General Provisions.** Permanent signs which measure twelve (12) square feet or less in gross surface area shall not be required to obtain a permit unless such sign is illuminated in which case it would be required to obtain an electrical permit. Temporary signs as defined below, and which measure twelve (12) square feet or less in gross surface area are also exempt from the requirement to obtain a permit.

a. All signs shall be set back a minimum of five (5) feet from any public right-of-way.

b. All signs permitted in residential districts shall be permitted in these areas.

c. Each business shall be permitted to have a specified amount of signage based upon the linear front footage of the building, or portion of the building, occupied by the business, and based upon its setback distance from its front property line. Said signage may be located on one (1) or more sides of the building in which the business is located as long as the total square footage of the signage does not exceed two (2) square feet in area for each front foot of the structure, or portion of the structure, in which the use is conducted for businesses set back up to fifty (50) feet from any public right-of-way and three (3) square feet for each front foot of the structure, or portion of the structure, in which the use is conducted for businesses set back in excess of fifty (50) feet from any public right-of-way.

d. An allowable sign shall be either wall mounted or freestanding, but shall not be a combination unless permitted under section 10-146.6 2. of this ordinance. The total net area of a freestanding sign shall not exceed that allowed for the frontage sign and in no case shall exceed one hundred (100) square feet. No business shall erect more than one (1) freestanding sign except, however, wherever a building has a rear or side parking lot or lots, or adjoins a public street, a second freestanding sign shall be permitted for only one (1) side or rear (in addition to the allowed front freestanding sign) provided that the sum total of square feet for the additional sign does not exceed fifty percent (50%) of the allowed area of the front freestanding sign. Shopping centers and planned unit development-commercial buildings may be allowed one (1) freestanding sign for each six (6) tenants or fractions thereof. Further, in the event that more than one (1) freestanding sign is permitted by virtue of this section, there shall be a minimum distance between such signs of thirty three percent (33%) of the linear frontage of the building(s) which they serve.

e. In cases where the building has a side or rear parking lot which faces or adjoins a residential district, a sign may be located on such side or rear of the building and shall be developed to the same standards as are required in paragraph d. above provided, however, that said sign if illuminated, shall be indirectly lighted in such a manner as not to be disturbing to the adjoining residential district.

f. A non-illuminated or illuminated sign bearing the name and/or the type of business of the principal tenant or tenants occupying space in the building that does not have space with an exterior wall provided shall be permitted. However, that sign shall be located at the principal entrance to the building where such occupied space is located and the total area of such signs devoted to each occupant shall not exceed two hundred (200) square inches, and the total area of such sign shall not exceed eight (8) square feet.

g. Two (2) business signs painted on the windows and or doors of each business bearing the name, street number and or type of business of the principal occupant; provided, however, that there shall be not more than one (1) such sign on each window or door, and said sign shall not exceed six (6) square feet in area and the total area of all signs shall not exceed nine (9) square feet.

h. A business sign painted on the valance of an awning bearing only the name of the principal occupant and or the street number of such businesses; provided, however, that a sign shall not exceed a total of two (2) square feet for each linear foot of frontage of the structure or portion of the structure in which the use is conducted for buildings set back up to fifty (50) feet from any public right-of-way of three (3) square feet for each linear foot of frontage of the structure or portion of the structure in which the use is conducted for buildings set back more than fifty (50) feet from any public right-of-way.

i. A sign required by law to be exhibited by the occupant of the premises; provided, however, that the said sign shall not exceed six (6) square feet in gross surface area.

j. A sign serving the public convenience, such as a "notary public," "public telephone," "public restroom," or words or directions of similar import provided, however, that such signs shall not exceed seventy two (72) square inches in total gross surface area and only one (1) sign of each type shall be displayed at the building.

k. Window/door signs shall not be placed in such a manner that they would impair the ability to see inside a building from either a street or a parking lot (for safety reasons) and shall not exceed twenty percent (20%) of the total exterior window space.

l. Streamers and pennants shall be allowed so long as they are properly maintained.

m. In the case of drive-in or drive-through merchandising businesses, two (2) informational (menu, price, etc.) signs shall be allowed, not exceeding fifty (50) square feet in gross area for each sign.

n. Temporary non-electrical signs announcing or advertising any educational, charitable, philanthropic, civic, religious, drive, movement or event shall be allowed for a period not to exceed fourteen (14) days preceding the event. The location of such signs shall be erected or placed in such a way as not to obstruct vehicular or pedestrian traffic or vision of persons using the public roadways within the Town of Dyer. The sign shall be removed within three (3) days following the event advertised.

o. A non-illuminated temporary sign pertaining to the sale or lease of the premises upon which it is placed and not exceeding thirty-two (32) square feet in gross surface area, provided that said sign shall be removed within seven (7) days after the consummation of the sale or lease of the premises or the termination of the agent's authority.

p. A non-illuminated temporary sign bearing only the street number of a new or remodeled structure and the name or names of the general contractor, subcontractor, owner and tenant, during construction work on the premises upon which they are placed, not exceeding thirty two (32) square feet in total gross area of all such signs, provided that said sign or signs shall be removed within seven (7) days after substantial completion of the construction work and in no event shall be exhibited for more than twenty-four (24) months.

q. Banners.

1. A business may be allowed to erect one (1) banner at a time, for a maximum period of two (2) calendar months for each message. Said banner shall be allowed to be up to thirty-two (32) square feet on any size building and further shall be allowed to be as large as two (2) square feet in area per one (1) linear foot of the wall of the building on which the banner is posted; said banner shall also be attached to an existing building and shall not cover an exterior window. A banner must be rated to withstand sixty (60) pounds of wind pressure per square foot. A permit must be obtained prior to the posting of a banner. If a business is located on a corner lot, it may be allowed to erect an additional banner on one (1) side of the building in addition to a banner erected on the principal frontage of the building.

2. Upon the issuance of a permit for a banner, the banner will be deemed to have remained posted for its fully allocated period. In other words, if a banner is posted for less than the time period specified on the permit application, the difference cannot be added to a future posting of a banner.

3. An annual banner permit fee shall be permitted under the following conditions:

- (a) Banner cannot cover an exterior window;
- (b) Message must be changed no less frequently than every sixty (60) days;
- (c) Banner must be attached to the building or unit that it serves;
- (d) Banner cannot be placed on an accessory structure;
- (e) Annual banner permits shall be prorated from the first day of the month in which they are issued; or
- (f) See Town Code Section 7-63 for permit fee.

r. Portable signs which advertise temporary sales promotions or special events shall be permitted as follows:

1. An existing business may use a portable sign up to two (2) times per calendar year not to exceed fifteen (15) days per posting except that at the permittee's discretion, the postings may be for individual time periods or consecutive time periods.

2. Portable signs are limited to thirty-two (32) square feet in area.

3. Portable signs require a permit and may not be closer than four hundred (400) feet to another portable sign.

s. Sandwich boards.

- 1. Cannot be placed on public right-of-way;
- 2. Are limited to eight (8) square feet on size;
- 3. Can only be displayed during regular business hours;
- 4. Are limited to one per frontage and one per building/unit;
- 5. Must be within ten (10) feet of the building/unit it serves.

2. The following regulations shall apply to businesses in buildings which are set back more than fifty (50) feet from a public street.

a. In addition to those signs permitted in section 10-146.6(1), a shopping center whose building or buildings are all set back more than fifty (50) feet from the nearest public street shall be permitted one (1) freestanding sign not exceeding one hundred (100) square feet in gross surface area per display area, for each six (6) tenants or fraction thereof, in the shopping center. Further, in the event that more than one (1) freestanding sign is permitted by virtue of this section, there shall be a minimum distance between such signs of thirty-three percent (33%) of the linear frontage of the building(s) which they serve. Such sign shall not project within or be closer than five (5) feet to any property line. The sign permitted by this section shall be additional to the sign authorized by section 10-146.6(1) only if the sign constructed pursuant to section 10-146.6(1) is a wall mounted sign.

b. In addition to those signs allowed in section 10-146.6(1), any business except gasoline service stations and public garages, in a building set back more than fifty (50) feet from the nearest public street and not part of a shopping center, shall be permitted one (1) freestanding sign not exceeding two (2) square feet in area for each linear foot of frontage of the structure or portion of the structure in which the use is conducted, but in no case exceeding one hundred (100) square feet in gross surface area. Such sign shall not project within or be closer than five (5) feet to any property line. This section shall not be construed to allow more than one (1) freestanding sign. The sign permitted by this section shall be additional to the sign authorized by Section 10-146.6(1) only if the sign constructed pursuant to section 10-146.6(1) is a wall mounted sign.

c. A business or businesses with attached parking lot may erect free standing traffic directional signs, each not to exceed four (4) square feet of gross surface area and not to be higher than three (3) feet from the ground. Such signs may be illuminated. Such signs shall bear no advertising matter other than logos or business names.

3. **Gasoline Service Stations and Public Garages.** In addition to the signs allowed elsewhere in this section, gasoline service stations and public garages may display the following special signs which are deemed customary and necessary to their respective businesses.



a. A direction sign or lettering displayed over individual entrance doors or bays consisting only of the words "washing," "lubrication," "repairs," "mechanic on duty" or other words of similar import; provided, however, that there shall not be more than one (1) sign over each entrance or bay, the letters thereof shall not exceed six (6) inches in height and the total gross area of each such sign shall not exceed three (3) square feet.

b. Customary lettering other than insignia which is a part of a gasoline pump, consisting only of the brand name of gasoline sold, type of service available, lead warning sign, a price indicator and any other sign required by law, all of which shall not exceed a total gross area of three (3) square feet on each side of the pump.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-146.7 Signs in B-1 Business Districts.**

The sign regulations in B-1 districts shall be the same as those for B-3 districts, except as follows:

If the B-1 district is immediately adjacent to a residential zoning district then any illuminated signs shall be indirectly lighted and shall not be disturbing to the adjacent or adjoining residential district.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-146.8 Exemptions.**

The provisions and regulations of this proposed sign ordinance shall not apply to the following:

1. Cornerstones or names of buildings inscribed in stone or bronze as part of the building or structure provided they are no larger than ten (10) square feet for each display surface.
2. Signs erected by a governmental unit.
3. All signs within buildings.
4. Flags of the Town, the State of Indiana, or the United States of America, including such flags as POW/MIA.
5. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter other than logos or business names and limited to a maximum of four (4) square feet in size.
6. Banners mounted on street light poles by the Town or an agent of the Town.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-146.9 Enforcement.**

Any person, firm, or corporation who violates or fails to comply with this section or any plan thereof shall be punished by a fine not to exceed twenty-five hundred dollars (\$2,500.00). Every day any violation of this section shall continue shall constitute a separate offense.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-146.10 Sign Permit Fees.**

See Schedule of fees and permits. (See Section 7-63 of this Code)

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-146.11 Definitions.**

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

1. **Portable Sign.** Any device designed to inform or attract attention of persons not on the premises on which the device is located, which device can be easily transported or carried from place to place and which is not attached to the real estate on which it is located in a permanent manner.
2. **Sandwich Sign.** A device limited in size to eight (8) square feet which is placed in front of a building advertising such things as daily specials and can be posted only during the hours of operation of the business and which must not be placed on a public right-of-way. Such device may be and frequently is, in the shape of an A frame.
3. **Sign.** Any device designated to inform or attract attention of persons not on the premises on which the sign is located, provided however that the following shall not be included in the application of the regulations herein:
  - a. Signs not exceeding one (1) square foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations.
  - b. Legal notices; identification, information, or directional signs erected or required by governmental bodies.
  - c. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights.
  - d. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter other than logos

and business names and limited to a maximum of four (4) square feet in size.

4. **Signs - Number and Surface Area.** For the purpose of determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related, and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, or where there is reasonable doubt about the relationship of elements each element shall be considered to be a single sign. The surface area of a sign shall be computed as including the entire area within a regular geometric form or combinations of regular geometric forms comprising of all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in computation of surface area.

5. **Signs - Off Site.** Signs other than on-site signs.

6. **Signs - On-Site.** A sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services, or activities on the premises.

7. **Structure.** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, billboards, signs, and poster panels.

8. **Temporary signs.** Signs advertising or identifying an infrequent, irregular or non-continuous event, sale or occasion. Such signs are limited in duration to thirty (30) days posting and are subject to all other regulations of this ordinance concerning setbacks from property lines. Temporary signs which are less than twelve (12) square feet in gross surface area shall not be illuminated and shall not be required to obtain a permit. Among others, political and for sale/rent signs shall be considered to be temporary signs.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-146.12 Signs in Special Use Districts.**

The sign regulations in the Special Use District (SUD) shall be the same as those for B-1, B-2 and B-3 Districts, except that:

1. Buildings located in the Special Use District shall be permitted to have both a free standing sign as well as wall mounted signage regardless of their setbacks from their respective property lines. Free standing signs shall be allowed to be two (2) square feet in size for each linear foot of frontage of the building that it serves up to a maximum of one hundred (100) square feet. Wall mounted signage is limited to two (2) square feet for each linear foot of frontage of the building it serves or the unit within the building that it serves.

2. Signs in this district shall be allowed to extend over a public sidewalk as long as a minimum vertical clearance of eight (8) feet exists between the bottom of the sign and the public sidewalk.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147 Landscaping Requirements.**

##### **Sec. 10-147.1 Purpose.**

The purpose of this landscaping ordinance, which includes Appendices A through D, adopted by reference, is to underscore the essential role that landscape materials play in the responsible development of real property. The minimum landscape standards contained herein are intended to benefit the public welfare through improved aesthetics, preservation of greenspace, improved and/or maintained air quality, and reduction of storm water runoff, glare and heat build-up.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-147.2 Applicability.**

The minimum landscape standards contained herein shall apply to all public and private Multi-Family Residential, Commercial, Institutional and Industrial developments in the Town, except that previously-approved developments need not comply unless new site development approval is being sought. However, in developments located within a designated Special Use District (SUD), in the event that these landscaping requirements conflict with the SUD's developmental standards for landscaping, the SUD developmental standards shall prevail.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-147.3 Planting Standards.**

Under no circumstances shall any artificial plant be installed and/or counted as part of the plantings required by this ordinance. All plant materials required by this ordinance shall be living and shall meet the additional requirements contained in this ordinance.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-147.4 Conflicts in Standards.**

In any case, except within a designated Special Use District (SUD), in which conflicts exist between the landscaping

requirements of this ordinance and the landscaping requirements of any other applicable Town Code Sections, the stricter standard shall apply.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.5 General Requirements.**

All plant materials required by this ordinance shall be free of disease, insects and/or damage and shall be correctly labeled indicating genus, species and cultivar at the time of the final inspection by Town staff or designee. The planting patterns of plant material shall be staggered and mixed in order to avoid long, monotonous and repetitive edges, especially along roadways.

For the purposes of this section, one (1) tree equals five (5) shrubs. A developer may substitute up to twenty-five percent (25%) of the total trees required under this section with shrubs, at a ratio of five (5) shrubs for every one (1) tree substituted. Conversely, a developer may substitute up to twenty-five percent (25%) of the total shrubs required under this section with trees, at a ratio of one (1) tree for every five (5) shrubs substituted.

(Ord. No. 2007-33, 12-27-05)

#### **Sec. 10-147.6 Screening Requirements.**

a. Ground mounted heating and cooling units and above ground fuel tanks must be screened from view from public streets and/or adjacent properties.

b. All trash dumpsters, trash pads, loading areas, loading docks, building service areas and outside storage areas shall be screened from view from land in a residential zone and must be screened from view if visible from a public street. Such screening may be achieved by using a minimum six (6) foot high opaque fence, wall, berm or evergreen screen.

c. Vision clearance triangles must be kept clear of landscape materials greater than two (2) feet in height.

d. All trees and shrubs must be planted a minimum of five (5) feet behind the right-of-way line.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.7 Bufferyard Landscaping Requirements.**

The requirements of this ordinance shall be applicable to bufferyards required elsewhere in the Town Code, as well as parking lots.

a. Bufferyards that are intended to physically separate and visually screen adjacent land uses that are not fully compatible must be a solid, opaque screen of at least six (6) feet in height. Plants used exclusively for screening must be at least six (6) feet in height at time of planting, must provide a solid screen, and must provide said solid screen year round.

b. Bufferyards that separate compatible uses are required to have a minimum of one (1) deciduous tree and five (5) shrubs for every five hundred (500) square feet of adjacency.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.8 Landscape Plan Required; Content.**

Where required, a landscape plan shall conform to the following requirements:

a. A landscape plan is required for each lot within a proposed development. It is recommended that the landscape plan be prepared by a landscape architect, nurseryman, or other professional experienced in landscape design and the installation and care of plant materials.

b. All landscape plans submitted for approval as a component of a required site plan shall show the entire zoning lot to scale, on twenty-four (24) inch by thirty-six (36) inch sheets and shall contain the following information:

(1) The location and dimensions of all existing and proposed structures, parking lots and drives, roadways and right-of-way, sidewalks, bicycle paths, ground signs, refuse disposal areas, bicycle parking areas, freestanding electrical equipment, recreation facilities, utility lines and easements. Freestanding structural features, and other landscape improvements, such as earth berms, walls fences, screens, sculptures, fountains, street furniture, lights, and courts or paved areas;

(2) The name and address of the owner, developer, and plan preparer, the date the plan was prepared, scale, and north arrow;

(3) The location, quantity, size, and name, both botanical and common, of all proposed planting materials;

(4) The locations, size, and common name of existing trees and individual shrubs, areas of dense trees or shrubs, and other natural features, indicating which are to be preserved and which are to be removed;

(5) The approximate location and generic identification of existing structures and plant materials within the yard of adjoining properties;

(6) Existing and proposed grading of the site, including proposed berming, indicating contours at not more than two (2)-foot intervals;

- (7) Specifications of the type and boundaries of all proposed vegetative ground cover;
- (8) Design of fences and other significant accessory structures;
- (9) The location of barriers to be placed at or beyond the drip line of any trees to be preserved, and the type of material to be used for the barrier;
- (10) Planting and installation details as necessary to ensure conformance with all required standards;
- (11) Details indicating specific grading measures or other protective devices where trees are to be preserved in areas of cut and fill; and
- (12) A tabulation clearly displaying the relevant statistical information necessary for the Plan Commission to evaluate compliance with the provisions of this ordinance.

c. Any existing vegetation not of the species and type included in Appendix D, adopted by reference, that is retained, and that otherwise meets the species and location requirements of this ordinance, may be counted one and one-half (1.5) times towards fulfilling the minimum landscaping requirements, subject to the approval of the Plan Commission or its designee. No construction activity of any kind shall take place within the area defined by the drip-line of any vegetation that is to be retained and counted as fulfilling these requirements. Any retained existing vegetation shall be replaced with a species and type outlined in Appendices A, B, or C of this ordinance, adopted by reference, in the event that said retained vegetation ceases to be living.

d. All new trees required to be planted by this ordinance shall be measured as follows:

- (1) All deciduous and ornamental trees shall be at least two and one-half (2½) inches in diameter at the time of planting, measured at six (6) inches above the rootball.
- (2) All evergreen trees shall be a minimum of five (5) feet in height at the time of planting, measured from the top of the rootball.
- (3) All shrubs shall be a minimum of eighteen (18) inches in height at the time of planting, measured from the top of the rootball.

e. Earth mounds and berms shall be physical barriers that block or screen the view similar to a hedge, fence or wall. Mounds shall be constructed with proper and adequate plant material to prevent erosion. A difference in elevation between areas requiring screening does not constitute an existing earth mound and shall not be considered as fulfilling any screening requirement. Where mounds are to be mowed, the maximum permitted slope is 3:1 (run:rise).

f. Grass shall be planted in species normally grown as permanent lawns in northern Indiana. In swales or other areas subject to erosion, solid sod, an erosion reducing net or suitable mulch shall be used.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.9 Design Standards.**

All proposed landscape materials should complement the form of the existing trees and plantings. Light, water, soil conditions, and on-going maintenance requirements should be considered in selecting plant materials.

a. **Vehicle Overhang.** Parked vehicles may hang over the landscaped area up to two and one-half (2½) feet. In no instance shall this overhang be counted as part of the required parking space area.

b. **Groundcover.** All areas not landscaped with hedges, walls or trees shall be provided with grass or other acceptable vegetative ground cover. In no case shall any required landscaping area be covered with rock, mulch or other non-living material. In no instance shall this provision be interpreted as prohibiting the placement of mulch around plantings.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.10 Maintenance Requirements.**

Trees, vegetation, irrigation systems, fences, walls and other landscape elements are considered elements of a project in the same manner as parking and other site details. The owner of the property shall be responsible for the continuous proper maintenance of all landscaping materials, and shall keep them free from refuse and debris and in good repair at all times. The owner of the property shall either remove all debris prior to mowing of the landscaped area(s) or shall bag as the mowing activity occurs so as not to discharge debris onto neighboring properties.

a. **Replacement of Landscaping Materials.** All unhealthy or dead plant material shall be replaced by the next planting season. Other required landscape material that becomes defective shall be replaced or repaired within three (3) months of the occurrence of the defect.

b. **Trimming Plant Material.** Landscape materials are intended to grow, spread and mature over time. Landscaping materials used to fulfill requirements of this ordinance may not be pruned or otherwise treated so as to reduce overall height or level of opacity below the minimum requirements. Pruning, limbing-up, topping, and other inhibiting measures including removal may only be practiced to insure the public safety, to maintain a neat and attractive appearance, and to preserve the relative health of the material involved.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.11 Property Interior Requirements.**

Landscaping shall be required on each lot based on the use of that lot as defined in the Site Interior Planting Requirements table. (See below).

- a. **Mixed Use Properties.** Where a lot is occupied by a combination of the land uses listed in the Site Interior Plantings Requirements table, only the plantings consistent with the requirements for the land use that would result in the most landscaping is required.
- b. **Tree Locations.** All required trees may be located in clusters or dispersed throughout the yard.
- c. **Yard Calculations.** For the purposes of this ordinance, the yard shall mean all areas of the property not covered with structures, parking areas or other hard surfaces. Additionally, detention/retention ponds shall be computed at fifty percent (50%) of their actual size for purposes of determining the yard area that either comprises. Other areas required to be landscaped by this ordinance and required bufferyards shall not be included in the calculation of yard area.

SITE INTERIOR PLANTING REQUIREMENTS TABLE	
For this land use type:	1 deciduous, evergreen or ornamental tree shall be required for every...
Multi-family residential	500 square feet of yard area
Commercial	500 square feet of yard area
Institutional	500 square feet of yard area
Industrial	500 square feet of yard area

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.12 Parking Lot Perimeter Requirements.**

All parking lots, including parking spaces, interior drives, and loading/unloading areas, shall be separated from all Thoroughfare Plan recommended street rights-of-way by a landscaping area that is a minimum of ten (10) feet in width. The landscape area shall be planted with either of the following options or a combination of both:

- a. **Trees and Shrubs.** A minimum of one (1) tree shall be provided for every five hundred (500) square feet of landscaped area. The trees may be a combination of deciduous, evergreen and or ornamental trees. In addition, a minimum of one (1) shrub shall be provided for every one hundred (100) square feet of landscaped area.
- b. **Landscape Berm.** A landscaped berm that is a minimum of three (3) feet in height shall be provided along the length of the landscaped area. A minimum of one (1) shrub shall be provided for every five (5) linear feet of berm.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.13 Parking Lot Interior Requirements.**

To help reduce excessive heat buildup and emissions from large areas of hard surfacing, landscape area must be provided within parking lots.

- a. **Landscaped Areas Required.** Landscape areas with a surface area equal to five percent (5%) of the area of the paved surface (including all parking spaces, interior drives, loading docks, drop-off/pick-up lanes, and access drives beyond the right-of-way) shall be provided in all parking lots.
- b. **Landscaped Area Standards.** The required landscape areas shall meet the following minimum requirements:
  1. All required landscaped areas shall consist of curbed islands or peninsulas that are surrounded on at least two (2) sides by pavement. Landscaping on the perimeter of the parking lot shall not be counted toward meeting this requirement.
  2. Landscape areas must be located on a lot line that is immediately adjacent to another commercial lot while at the same time leaving space for vehicular and pedestrian access between adjacent commercial lots.
  3. A minimum of one (1) deciduous tree shall be provided for every five hundred (500) square feet of total landscaped area required in this section.
  4. A landscaped area shall be provided at the end of every twenty (20) parking spaces or one hundred (100) linear feet, whichever is less.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-147.14 Appendix A through D.**

Appendix A through D is incorporated herein by reference. It is on file in the Office of the Clerk-Treasurer and available for public inspection during regular business hours.

(Ord. No. 2007-33, 12-27-07)

## **Sec. 10-148 Exterior Light Requirements.**

### **Sec. 10-148.1 Purpose.**

The purpose of this Exterior Lighting Regulations Ordinance is to underscore the essential role that exterior lighting plays in the responsible development, use and maintenance of real property. The Exterior Lighting Regulations set forth and established herein are intended to benefit the public welfare through improved aesthetics and increased public safety by reduction of glare, visual clutter, lighting trespass and urban sky glow.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-148.2 Applicability.**

The Exterior Lighting Regulations set forth and established herein shall apply to all commercial, industrial and institutional properties in the Town, except that previously-approved development properties need not comply.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-148.3 Definitions.**

Unless the meaning and/or context clearly indicate otherwise, the following definitions shall apply for purposes of this ordinance.

1. **Fixture.** The assembly that holds the lamp (bulb) in a lighting system. **Fixture** shall include the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.
2. **Flood Light.** A luminaire or bulb which projects light in a specific direction in a wide beam one hundred (100) degrees or more.
3. **Full-cutoff or fco.** A light fixture which cuts off all upward transmission of light.
4. **Fully-shielded.** A fixture with housing or attachment thereto which prevents a line of sight to the bulb when viewed from another property and which prevents a line of sight to any part of the light source at or above a horizontal plane running through the lowest portion of the fixture.
5. **Glare.** The reflection of harsh, bright light; and the physical effect resulting from high luminances or insufficiently shielded light sources in the field of view.
6. **Horizontal/Vertical Footcandles.** The amount of light striking a horizontal or vertical plane.
7. **IESNA.** The Illuminating Engineering Society of North America.
8. **Light Source.** The bulb and lens, diffuser, or reflective enclosure.
9. **Light Trespass.** Light projected onto a property from a fixture not located on that property.
10. **Lumens.** The measure of brightness of the illumination exiting a bulb.
11. **Spotlight.** A luminaire or bulb which projects light in a specific direction in a narrow beam, forty-five (45) degrees or less.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-148.4 Regulations.**

It shall be unlawful for any person, firm or corporation to install, erect or maintain any floodlight, searchlight, security light, or other form or type of light source within the municipal corporate limits of the Town of Dyer in such a manner that the light rays from such floodlight, searchlight, security light or other form or type of light source fail to conform with the terms and conditions of this ordinance. Further, it shall be unlawful for any person, firm or corporation to install, erect, or maintain any floodlight, searchlight, security light or other form or type of light source within the municipal corporate limits of the Town of Dyer in such a manner that the light therefrom may distract the attention of any motor vehicle driver from the operation of a motor vehicle in a safe and prudent manner.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-148.5 Light Trespass.**

The maximum illumination from any artificial lighting source other than street lights, at any distance up to, and including, five (5) feet inside an adjoining residential parcel or public right-of-way, shall not exceed 0.05 horizontal footcandles and 0.05 vertical footcandles. The maximum illumination from any artificial lighting source other than street lights, at any distance up to, and including, five (5) feet inside an adjoining commercial or industrial parcel or on a public roadway, shall not exceed 0.1 horizontal footcandles or 0.1 vertical footcandles.

(Ord. No. 2007-33, 12-27-07)



## **Sec. 10-148.6 General Lighting Design Requirements.**

a. The bulbs in outdoor light fixtures emitting from between six hundred (600) to twelve hundred (1,200) lumens shall be frosted glass or shall be covered by frosted glass or another similar translucent cover. An outdoor fixture emitting more than twelve hundred (1,200) lumens shall be a full cutoff fixture.

b. A spotlight or floodlight emitting less than eighteen hundred (1,800) lumens need not be full cutoff or covered by a translucent cover if:

- (1) Its center beam is aimed at a point not beyond any property lines upon which the light is situated,
- (2) If it is pointed at no higher than forty five degree below horizontal,
- (3) Is motion detector activated, and
- (4) The light cycles off after five (5) minutes or less.

c. The use of search lights, laser lighting, or lights that pulse, flash, rotate or simulate motion for advertising or promotions is prohibited. This shall not apply to such lights that are used in approved and permitted signage. Emergency lighting and traffic control lighting is exempt from this prohibition. Tower lighting shall not be permitted unless required by the Federal Aviation Administration (FAA). Lighting required by the FAA shall be of the lowest allowed intensity permitted and shall be red unless specifically forbidden under FAA requirements.

d. At the close of business, all outdoor lighting shall be reduced by shutting off half of the lighting sources. Lighting from the top downward as opposed to upward lighting, shall be encouraged.

### **e. Buildings and Other Vertical Structures.**

1. Lighting fixtures designed to illuminate a building or vertical surface shall be located, aimed and shielded so that light is directed only onto said surface. Lighting fixtures shall not be directed toward adjacent streets or roads.

2. Outside lighting fixtures shall be directed below the horizontal rather than above the horizontal unless there is a method employed which prevents light from such a fixture from projecting beyond the highest point of any building on the property.

### **f. Landscaping.**

1. When landscaping is to be illuminated, the Plan Commission, or its designee, shall first be presented with a landscape lighting plan for review. Approval will be considered for any landscape lighting plan that:

- (1) Presents the purpose and objective of the lighting,
- (2) Shows the location of all lighting fixtures,
- (3) Shows which items of landscaping each fixture is to illuminate, and
- (4) Demonstrates that the installation of the fixtures will not generate excessive light levels, cause excessive glare, or direct light beyond the landscaping into the night sky.

g. **Parking Lot Lighting.** Parking lot lighting shall be designed to provide the minimum lighting necessary to ensure adequate vision and comfort in parking areas, and to not cause excessive glare or direct illumination onto adjacent properties or streets. In addition:

1. All lighting fixtures serving parking lots shall be full cut-off fixtures.
2. Mounting heights of lighting fixtures shall not exceed thirty (30) feet as measured from the grade at the base of the pole to the glass pane of the full cutoff lighting fixture.
3. The minimum illumination level during business hours shall be no less than 0.4 footcandles. The ratio of maximum to minimum illumination shall not exceed 15:1.

h. **Lighting of Exterior Display/Sales Areas.** Lighting levels on exterior display/sales areas shall be adequate to facilitate the activities taking place in such locations. Lighting of such areas shall not be used to attract attention to the business. Only signs permitted by applicable provisions of the Town Code are to be used for that purpose. An applicant shall designate areas to be considered display/sales areas and areas to be used as parking or passive vehicle storage areas, which designations shall be approved by the Plan Commission, or its designee. In addition:

1. Areas designated as parking or passive vehicle storage areas shall be illuminated in accordance with the requirements for parking areas detailed in subsection g. of this section.
2. Areas designated as exterior display/sales areas shall be illuminated so that the average horizontal illuminance at grade level is no more than 5.0 footcandles. The average horizontal illuminance at grade level relative to this section shall be computed for only that area designated as exterior display/sales area.
3. Light fixtures shall be full cut-off fixtures and be located, mounted, aimed, and shielded so that direct light is not cast onto adjacent streets or properties.
4. Fixtures shall be mounted no more than thirty (30) feet above grade.

i. **Lighting of Walkways/Bikeways and Parks.** Where special lighting is to be provided for walkways, bikeways, or parks, the following requirements shall apply:

1. The walkway, pathway, or ground area shall be illuminated to a level of no less than 0.4 and not greater than an average of 4 footcandles across the site.

2. Lighting fixtures shall be designed to direct light downward, and light sources shall have an initial output of no more than one thousand (1,000) lumens.

j. **Lighting of Gasoline Station/Convenience Store Aprons and Canopies.** Lighting levels on gasoline station/convenience store aprons and under canopies shall be adequate to facilitate the activities taking place in such locations. Lighting of such areas shall not be used to attract attention to the business. Only signs permitted by applicable provisions of the Town Code are to be used for that purpose.

1. Areas on the apron away from the gasoline pump islands used for parking or vehicle storage shall be illuminated in accordance with the requirements for parking areas set forth in subsection g. of this section. If no gasoline pumps are provided, the entire apron shall be treated as a parking area for purposes of this ordinance and regulations.

2. Areas around the pump islands and under canopies shall be illuminated so that the average illumination level of not greater than 22.0 footcandles.

3. Light fixtures mounted on canopies shall be recessed so that the lens cover is recessed or flush with the bottom surface of the canopy and/ or shielded by the fixture or the edge of the canopy so that light is restrained to no more than eighty-five degrees (85°) beyond the vertical plane.

4. Lights shall not be mounted on the top or sides of the canopy, and the sides of the canopy shall not be illuminated.

5. Existing gasoline stations will be required to conform to the provisions of this ordinance and these regulations when any remodeling or revamping of the station occurs.

k. **Lighting of Outdoor Facilities.** It is recognized that outdoor nighttime facilities and activities (concerts, athletic contests, and the like) have unique lighting requirements and that illumination levels vary, depending on the nature of the activity. The regulations of this ordinance, are intended to permit adequate lighting for such events, while minimizing sky glow, reducing energy consumption and reducing glare and unwanted illumination of surrounding streets and properties. A lighting design plan shall address the lighting requirements of the various adjacent areas and affected properties, and how the requirements of this ordinance for the specific outdoor nighttime facility and/or activity will be met.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-148.7 Site Plans.**

All outdoor lighting installations must receive approval of the Plan Commission, or its designee. An applicant shall submit to the Town sufficient information, in the form of an overall exterior lighting plan, to enable the Town to determine that the applicable regulations of this ordinance, will be satisfied. The lighting plan shall include at least the following items:

a. A site plan, drawn to a scale of one (1) inch equaling no more than twenty (20) feet, showing buildings, landscaping, parking areas, and all proposed exterior lighting fixtures with readings space ten (10) feet apart and showing readings at a point five (5) feet outside of all property lines;

b. Specifications for all proposed lighting fixtures including, but not limited to, photometric data, designation as full cut-off fixtures, and other descriptive information on the fixtures;

c. Proposed mounting height of all exterior lighting fixtures;

d. Analysis and illuminance level diagrams showing that the proposed installation conforms to the lighting level standards in this ordinance; and

e. Drawing of all relevant building elevations showing the fixtures, the portions of the walls to be illuminated, the illuminance levels of the walls, and the aiming points for any remote light fixtures.

Lighting installations shall include timers, dimmers, or sensors to reduce overall energy consumption and eliminate unneeded lighting.

When an outdoor lighting installation is being modified, extended, expanded, or added to, that outdoor lighting installation shall be subject to the requirements of this ordinance and its regulations. Expansions, additions, or replacements to outdoor lighting installations shall be designed to avoid harsh contrasts in color and/or lighting levels. Electrical service to outdoor lighting fixtures shall be underground unless the fixtures are mounted directly on utility poles.

Proposed lighting installations that are not covered by the specific requirements and provisions of this ordinance will be approved only if the Plan Commission, or its designee, determines that said installations are designed to minimize glare, do not direct light beyond the boundaries of the area being illuminated or onto adjacent properties or streets, and do not result in excessive lighting levels. In general, IESNA standards shall be used to determine the appropriate lighting design.

For the purpose of these regulations and this ordinance, the mounting height of a lighting fixture shall be defined as the vertical distance from the grade elevation of the surface being illuminated to the bottom of the lighting fixture.



(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-148.8 Exemptions.**

The temporary use of lighting for public festivals, celebrations, and the observance of holidays are exempt from the provisions of this ordinance, except where the use creates a hazard or nuisance from excessive glare. However, consideration to light trespass requirements shall be demonstrated prior to commencing the use of the temporary lighting. Commercial activities exempt under the provisions of the ordinance shall only be able to use this exemption for one (1) occurrence per year.

All other lighting existing or installed prior to the date of the adoption of this ordinance which does not conform to the exterior lighting regulations set forth and established herein shall be exempt with the following conditions applying:

1. Lighting determined by the Town to create public hazard may be ordered to be removed or altered at any time;
2. At the close of business all lighting shall be reduced to a level not greater than those described in the Section 10-148.6g., Parking Lot Lighting.
3. Upon installation of any new luminaire, this ordinance shall apply to that luminaire.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-148.9 Street Lighting.**

Street lighting owned, operated, maintained or leased by the Town of Dyer shall be exempt from the provisions of this ordinance, in the interest of public safety. However, it is understood and acknowledged that the Town will make every effort to comply with the following exterior lighting standards:

1. All new, repaired or replaced fixtures shall be full cut off fixtures and the IESNA guidelines shall govern. However, the design for a particular area may suggest the use of street light fixtures of a particular period or architectural style as an alternative if the following items are observed:

- (a) The maximum initial lumens generated by each fixture may not exceed two thousand (2,000) lumens.
- (b) The mounting height of the alternative fixture may not exceed fifteen (15) feet.
- (c) Alternative lighting shall be approved in a public hearing conducted by the Board of Zoning Appeals as part of a petition for subdivision approval as a waiver from the requirements of the Book of Standards which are an appendix to the Subdivision Control Ordinance and which is held in accordance with the provisions of I.C., 5-3-1, et. seq. Public comment regarding the alternative lighting standard will be considered at that time.
- (d) Street lights shall be located in the public right-of-way or on easement acquired for such a purpose.
- (e) If the street has a sidewalk along one (1) side, the street lights will generally be limited to the sidewalk side of the street, unless the circumstances or safety considerations require otherwise.

The Dyer Town Council will adopt a replacement program to annually begin to replace street lighting fixtures (Cobra heads) that are not of the full cut-off variety with full cut-off fixtures. The Town Council shall target annually a budgetary figure, as funds are available, to replace fixtures during the normal course of maintenance.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-148.10 Injunction.**

Any person or property owner who violates any provision of this Exterior Lighting Regulations Ordinance, shall be subject to penalty and fine of not less than twenty-five dollars (\$25.00) and not more than two thousand five hundred dollars (\$2,500.00) for each offense, such fine to inure to the Town. Each day of the existence of any violation shall be deemed a separate offense. Further, the Town Attorney is authorized to commence and prosecute a proceeding for injunctive relief in a court of competent jurisdiction in Lake County, Indiana, and the Town shall be entitled to recover its attorney fees and costs.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-148.11 Immunity from Prosecution.**

The Town of Dyer, and its designees, employees, agents, representatives, attorneys, elected and appointed officials, Metropolitan Police Department and Volunteer Fire Department, and all other Town departments and agencies, charged with enforcement of state and local laws and code shall be immune from prosecution, civil or criminal, for reasonable, good faith enforcement of this ordinance while acting within the scope of authority conferred by the ordinance.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-149 through Section 10-154 Reserved for future use.**

### **Division II. Special Use Districts.**

#### **Sec. 10-155 Definition of Special Use District (SUD).**

A zoning district in which the development of lots shall be according to a plan, and in which development and/or improvements may not correspond in lot size, bulk, type of structure, density, lot coverage or required open space to the regulations otherwise required by the building, subdivision and zoning ordinances.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-156 Applicability of Special Use District Regulations.**

The SUD classification shall be used only in areas in which special or unusual development problems or needs for compatibility require that the Plan Commission approve a development plan for consistency with general development standards.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-157 Purpose for Special Use District Regulations.**

The SUD authorization serves to encourage unified development of a geographic area. Deviation from specific site development standards is both allowable and desirable as long as the general purposes for the standards are achieved. The development should promote a harmonious variety or grouping of uses and may utilize the economy of shared services and facilities. It is further the purpose of authorized SUDs to utilize:

- a. Advances in technology and design.
- b. A comprehensive development equal to or better than resulting from traditional lot-by-lot land use development, in which the design of the overall area permits increased freedom in the placement and uses of buildings and the location of open spaces, circulation facilities, off-street parking areas and other facilities.
- c. The potential of sites characterized by special features including but not limited to geography, topography, size, shape, historic or architectural significance, and location.
- d. Compliance with state and federal regulations.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-158 Outline Development Plan.**

For any geographic area designated by the SUD classification on the Official Zoning Map, which is also located within a designated Neighborhood Development Program Area, the Dyer Redevelopment Commission shall prepare an outline development plan. This plan shall include both maps and a written statement as described in this section. The information shall include enough of the area surrounding the SUD to demonstrate the relationship of the SUD with adjoining uses, both existing and allowable.

a. The maps which are part of the outline plan may be in general schematic form and shall contain the following information:

1. Existing topography.
2. Existing and proposed land uses and approximate location of structures.
3. Character and density of structures.
4. Approximate location of streets and public ways.
5. Public uses.
6. Common open spaces and a description of the proposed use.
7. Access for emergency services.

b. The written statement which is part of the outline development plan shall contain the following information:

1. A text describing the character of the proposed land use and development, and the manner in which it implements the goals and objectives of the Neighborhood Development Program Area.
2. A description of the public improvements, if any, proposed for construction by the Town as a part of or enhancement to the development.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-159 Application Process: Preliminary Development Plan.**

a. At the time a property owner desires to apply for approval to modify an existing structure or land use, or to begin new construction within any designated Special Use District, the petitioner shall prepare a preliminary development plan for submission to the Plan Commission. Existing structures shall not be subject to the following review process if the modification to the structure involves replacing like materials with like materials, i.e. replacing vinyl siding with new vinyl siding, or asphalt shingles with new asphalt shingles. Maintenance of an existing structure such as painting, window replacement, etc., shall not be subject to the following procedure.

1. Petitioner shall appear before the Plan Commission to describe and present the preliminary concepts, uses and intent of the proposed plan. The Plan Commission shall submit the plan to the Site Plan Review Committee for review and recommendation, pursuant to the requirements outlined in Section 10-130(d)(9).

b. All remedies available to the Plan Commission shall be the same as those contained in Section 10-102 of the Subdivision Control Ordinance. The review fee shall be that as set forth in Section 10-119 for SUD Development Plan Review.

c. Should engineering review be required, fees for such review shall be the same as those required in Section 10-119.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-160 Application Process: Final Development Plan.**

a. Within six (6) months of the Plan Commission's approval of the preliminary development plan, the applicant shall file with the Plan Commission a final development plan containing in final form the information required in the preliminary plan. The Plan Commission, however, may extend for an additional six (6) months the time period for the filing of the final development plan, when adequate need is shown. The final development plan may be submitted with the preliminary development plan if the Plan Commission deems it reasonable to allow such submittal. (See Section 10-159b.)

b. If the final development plan deviates in a material way from the preliminary development plan, the applicant shall be required to submit a revised preliminary development plan in the same manner as the original application.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-161 Special Use District - West U.S. 30 Corridor**

##### **Sec. 10-161.1 Application.**

This section applies only to the area zoned Special Use District (SUD) - West U.S. 30 Corridor, as established by Ordinance Nos. 95-6 and 96-19 and as amended by Ordinance No. 2003-26.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-161.2 Building Types and Uses.**

a. **Permitted Uses.** The following uses shall be permitted in the SUD - West U.S. 30 Corridor classification:

1. **Permitted Open Space Uses.** Open space areas may be used solely for parks, village greens, squares and natural areas. No enclosed structures shall be built in an open space area until and unless approval is given by the Dyer Plan Commission, at which time the owners of open space areas may elect to erect such structures so long as the structure is intended to further promote the use of the open space areas consistent with the intent of this section. Other uses may be permitted which, upon application to the Dyer Plan Commission, are deemed to be in accordance with the intent of the SUD - West U.S. 30 Corridor.

2. **Permitted Civic Uses.** Civic uses areas are areas or structures which are owned and or operated by a local, state or federal government entity and may be used for one (1) or more of the following:

(a) Community center or local government building.

(b) Library.

(c) Post office.

(d) Municipal services.

(e) Other uses which, upon application to the Dyer Plan Commission, are deemed to be in accordance with the intent of the SUD - West U.S. 30 Corridor.

3. **Permitted Type I Uses.** [Neighborhood District (ND) Type I areas may be used for one (1) or more of the following:

(a) Residential dwelling units, including single family and two family dwelling units and having a minimum six hundred (600) square foot per unit.

(b) Retail sales and services, including card and stationary, craft, frames, music, record, party supply, boutique, jewelry and flower.

(c) Offices.

(d) Specialty food service seating less than one hundred (100) patrons.

(e) Artist studios.

(f) Lodging, of more than six (6) guest rooms or twelve (12) guests and limited to two (2) stories in height including ground floor.

(g) Medical clinics, and health care facilities.

- (h) Automobile parking lots.
- (i) Public transit facilities.
- (j) Any use permitted in civic use and open space use.

(k) Other uses which, upon application to the Dyer Plan Commission, are determined to be in accordance with the intent of the SUD - West U.S. 30 Corridor.

**4. Permitted Type II Uses.** [Central Business District (CBD)] Type II Areas may be used for one (1) or more of the following:

- (a) Residential dwelling units, including single family and two family dwelling units and having a minimum six hundred (600) square foot per unit, to other than street level.
- (b) Retail sales and services, including card and stationary, craft, frames, music, record, party supply, boutique, jewelry, flower and video stores which must comply with parking requirements.
- (c) Offices.
- (d) Restaurants, specialty food service and private food service.
- (e) Day-care center.
- (f) Artist studios.
- (g) Lodging.
- (h) Medical clinics, and health care facilities.
- (i) Public transit facilities.
- (j) Laundry or dry cleaning.
- (k) Automobile parking lots.
- (l) Any use permitted in civic use and open space use.
- (m) Other uses not listed herein which, upon application to the Dyer Plan Commission, are determined to be in accordance with the intent of the SUD - West U.S. 30 Corridor.
- (n) Furniture repair, refinishing and stripping.

**b. Special Exceptions.** The following uses may be permitted by Special Exception in the SUD - West U.S. Corridor classification. The following uses may be permitted in Type II only as Special Exceptions, in the SUD - West U.S. Corridor classification:

- (1) Tavern/pub.
- (2) Bank or other financial institution.
- (3) Social club and health club.
- (4) Grocery store.
- (5) Churches.
- (6) Centers for the advancement and presentation of historical and cultural materials and events.
- (7) Technology development or services.
- (8) Schools which comply with parking requirements on site.
- (9) Workshops.
- (10) Other uses similar in all significant respects to a permitted use.
- (11) Drive-through facilities.

**c. Prohibited Uses.** The following uses shall not be permitted in the SUD - West U.S. 30 Corridor classification:

- (1) Industrial uses.
- (2) (Reserved).
- (3) The sale of explosives in any amount.
- (4) Automobile service station.
- (5) The sale or dispensing of fuels used for vehicular use.
- (6) Tattoo and sexually oriented businesses.

- (7) Motorized vehicle repair services, other than as an auxiliary use.
- (8) Convention centers.
- (9) Banquet facilities.
- (10) Automotive or vehicular sales or related uses.
- (11) Residential, other than as specified above.
- (12) Chemical manufacturing, storage or distribution, as a primary use.
- (13) Any commercial use which is primarily directed to patrons who are encouraged by the site layout, or buildings, to remain in their automobile while receiving goods or services.
- (14) Enameling, plating or painting except artist studios as a primary use.
- (15) Foundries, carting, express, moving or hauling terminal or yard.
- (16) Prisons, detention centers, or "half-way houses" associated with prisons or penitentiaries.
- (17) The manufacture, treatment or disposal of hazardous waste materials.
- (18) The manufacture, treatment or disposal of radioactive waste.
- (19) Agricultural uses, other than home gardens.
- (20) Scrap yards.
- (21) Mobile homes.
- (22) Commercial sand, gravel or other mineral extraction.
- (23) Outdoor commercial, except by vendor permit and restricted to the sale of produce, food or prepared food.
- (24) Outdoor storage.
- (25) Kennels.
- (26) Any use which produces any of the adverse impacts defined as prohibited under the definition of Light Industry.
- (27) Gasoline stations.
- (28) The sale of the following:
  - A. Consumer fireworks and explosive compositions except for:
    - 1. Dipped sticks or wire sparklers. However, total pyrotechnic composition may not exceed one hundred (100) grams per item. Devices containing chlorate or perchlorate salts may not exceed five (5) grams in total composition per item;
    - 2. Cylindrical fountains;
    - 3. Cone fountains;
    - 4. Illuminating torches;
    - 5. Wheels;
    - 6. Ground spinners;
    - 7. Flitter sparklers;
    - 8. Snakes or glow worms;
    - 9. Smoke devices;
    - 10. Trick noisemakers, which include:
      - a. Party poppers;
      - b. Booby traps;
      - c. Snappers;
      - d. Trick matches;
      - e. Cigarette loads
      - f. Auto burglar alarms;
  - B. Firecrackers or salutes;
  - C. Fireworks except for items listed in A(1) through A(10) above and model rockets, toy cap pistols, emergency

signal flares, matches, fixed ammunition for firearms, ammunition components intended for use in firearms, muzzle loading cannons or small arms, shells, cartridges, and primers for use in firearms, muzzle loading cannons or small arms;

- D. M-80's, cherry bombs, silver salutes and any device banned by the Federal Government;
- E. Helicopters or aerial spinners;
- F. Indoor pyrotechnics, special effects material;
- G. Mines or shells;
- H. Missile type rockets;
- I. Roman candles;
- J. Sky rockets.

(Ord. No. 2007-33, 12-27-07; Am. Ord. No. 2009-18, 11-18-09; Am. Ord. No. 2014-01, 1-9-14)

### **Sec. 10-161.3 Area Regulations.**

- a. **Minimum Lot Area.** The minimum area for any use shall be two thousand five hundred (2,500) square feet.
- b. **Maximum Building Size.** No building or structure shall exceed five thousand (5,000) gross square feet on a single story.
- c. **Building Height.** Building height shall be not less than fourteen (14) feet and not more than forty (40) feet.
- d. **Building Lines.**
  - 1. **Front Yards.** For building Types I and II, the front building line shall be less than twenty (20) feet from the curb edge of a public street or between ten (10) and fifteen (15) feet from the property line along Hwy. 30 on which the lot fronts. The front building line can vary only from the front building line of adjacent lots by no greater than five (5) feet with approval of the BZA. The front building line is a maximum setback line rather than a minimum setback line. No fence may be located forward of the actual building face.
  - 2. **Side Yards.** There are no interior side yard setback regulations. In other words, a building may be built out to the limits of the lot on which it is built, however, in the case of a corner lot, the side yard setback on the corner side shall be the same as that for a front yard setback.
  - 3. **Rear Yards.** The rear building line shall be thirty-five (35) feet or more from the rear property line when no ingress/egress service road abuts the rear property line and five (5) feet or more when an ingress/egress service road abuts the rear property line.
  - 4. **Exceptions.** Side yard entrances and stairs are allowed if entrance or stair and landings are an integral part of the building and constructed of like materials and stair and landings are fully enclosed and secured. At least one (1) entrance must face and abut the front yard in Type II buildings.
- e. **Sidewalks.** Sidewalks must be installed and must be a minimum of five (5) feet wide or as otherwise specified by the Town's Design Book of Standards.
- f. **Landscaping.**
  - 1. **Front yards.**
    - (a) For building Type I, the front yard of each lot shall be landscaped in such a manner as to provide significant living greenery other than grass, including such items as trees, shrubs or flowers. No parking shall be permitted in the front yard except when located on a passenger vehicle ingress/egress drive.
    - (b) For building Type II, the front yard of each lot shall be landscaped in such a manner as to provide significant living greenery other than grass, including such items as trees, shrubs, bushes or flowers except where the front building wall abuts a sidewalk which abuts a street. No parking shall be permitted in the front yard at any time.
  - 2. **Rear Yards.** A landscaped buffer, including significant living greenery, of not less than ten (10) feet shall be maintained between the rear property line and the remainder of the rear lot except when abutting an ingress/egress service road. No parking shall be permitted in this buffer area except when abutting an ingress/egress service road.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-161.4 Building Standards.**

The following building standards shall apply to each use type area within SUD - West U.S. 30 Corridor:

- a. **Public.** The construction of open colonnades on open space areas which adjoin Type I and II buildings is permitted.
- b. **Sidewalk Sizes and Requirements.** All sidewalk systems shall be handicapped accessible. Sidewalks shall generally be parallel with the streets they adjoin and may be either within the street right-of-way or within an individual lot. The sidewalk's use and maintenance shall be ensured by permanent easement.

## **Sec. 10-161.5 Parking.**

### **a. General Parking Options:**

1. Land area(s) for parking shall be reserved in accordance with the following minimum parking requirements within the SUD - West U.S. 30 Corridor. The Dyer Plan Commission, in its discretion, may not require the immediate construction of all of a parking area. The following requirements do not necessarily apply if a Shared Parking option is elected. Parking spaces shall be constructed in accordance with Section 10-132.

(a) **Civic.** Minimum one (1) parking space per one thousand (1,000) square feet of gross building square footage.

(b) **Residential.**

(1) Three-fourths ( $\frac{3}{4}$ ) parking spaces per sleeping room for single family (minimum one (1) space required) all fractions greater than one-half ( $\frac{1}{2}$ ) equal one (1) space.

(2) One (1) parking space per sleeping room for multi family and lodging.

(c) Restaurants, specialty and private food service, social and health clubs. Minimum one (1) space per two hundred and fifty (250) square feet of seating and/or counter area.

(d) All other uses. Minimum one (1) parking space per one thousand (1,000) square feet of gross floor area, all fractions greater than one-half ( $\frac{1}{2}$ ) equal one (1) space.

2. **On street Parking.** Generally, continuous head-in or parallel parking shall be provided along streets in Type II. Parallel parking is permitted along all other streets except Hwy. 30 and where a Town ordinance specifies otherwise.

3. **Parking Space Allocation.** For other than shared parking, parking spaces may be considered allocated to a particular lot, or use, if those spaces are entirely on that lot or the use of the spaces has been assured by assignment through easement or other legal guaranty. Street side parking may be allocated to a particular lot when a particular streetside space abuts a particular lot. Where streetside spaces abut more than one (1) lot, a particular parking space may be allocated to a particular lot only if more than sixty-six percent (66%) of the space abuts that lot or the space use has been assured by assignment.

4. **Location and Screening of Parking Lots.** Parking lots and areas shall be located at the side or rear of buildings and are prohibited from being located in front yards and on either corner of a corner lot. All parking lots or areas shall be screened to help minimize their view from the street.

(a) Parking lots or parking structures independent of a primary use, shall not be located at street intersections.

(b) Parking lots shall be screened from the sidewalk by walls, fences or solid landscaping six (6) feet in height. All screening must be approved by the Plan Commission. Where parking lots associated with a primary use are located at street intersections the screening requirement shall comply with Section 10-130(d)(1) in terms of its height.

(c) Adjacent parking lots shall have vehicular and pedestrian connections.

5. **Parking Garage Requirements.** Parking garages or structures built for the purpose of storing four (4) or more vehicles shall be buffered at street level by a commercial use to mitigate potentially detrimental affects to street quality that such structures might otherwise cause. Parking structures at sidewalks shall be fronted by Type II building uses. Automobile entry/exit shall not exceed thirty (30) feet in width.

6. **Ingress/Egress Service Roads.** No parking is permitted on ingress/egress service roads unless the ingress/egress service road is constructed to additional width and approved by the Plan Commission for such use.

7. Garages or carports are allowed only in Type I and shall be located a minimum of twenty (20) feet behind the street facade of the building.

## **Sec. 10-161.6 Utilities, Accessory Structures and Garbage.**

Utilities, equipment, accessory structures and the storage of garbage shall not be located in the front yard and shall not be visible from adjacent roadways for all building types.

## **Sec. 10-161.7 Non-Conforming Uses.**

a. Existing non-conforming structures located within the SUD - West U.S. 30 Corridor classification may be maintained as they existed at the time of passage of this ordinance. Non-conforming uses may be maintained as they existed at the time of passage of this ordinance. A non-conforming use may be extended throughout the structure in which it existed at the time of passage of this ordinance. A non-conforming use may not be extended to areas of the structure which were not a part of the structure at the time of passage of this ordinance. It is the intent of this ordinance to encourage the use of property within the SUD - West U.S. 30 Corridor in a manner which conforms to and enhances the outline development plan for the SUD -



West U.S. 30 Corridor.

b. When any non-conforming use of a structure is abandoned for a period in excess of six (6) months, the structure shall not thereafter be used except in conformance with the regulations of the SUD - West U.S. 30 Corridor.

c. Additions to Type I, Residential use structures in place at the time of passage of this ordinance do not need to comply with front and side yard requirements of this ordinance.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-161.8 Amendment to Zoning Map.**

The official zoning map, incorporated by reference into the Zoning Ordinance, shall be amended by designating the area described by the legal description and map attached hereto as a Special Use District - West U.S. 30 Corridor and the same shall be incorporated by reference into the Zoning Ordinance.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-162 Special Use District - Calumet Avenue Corridor.**

##### **Sec. 10-162.1 Application.**

This section only applies to the area zoned Special Use District - Calumet Avenue Corridor, as defined and outlined by the site map found in Appendix A and the legal description found in Appendix B of Ordinance No. 2006-25, the contents of which shall be incorporated by reference as part of this section. This section is amended by the addition of certain definitions which are set forth in Appendix B to Ordinance No. 2009-18, the contents of which shall be incorporated by reference as a part of this section.

(Ord. No. 2007-33, 12-27-07; Am. Ord. No. 2009-18, 11-18-09)

##### **Sec. 10-162.2 Developmental Standards.**

The developmental standards for this District, including but not limited to, regulations as to the development, maintenance and use of property within the District, shall be found in the "Calumet Avenue Corridor Plan" ("Developmental Plan"), a document prepared by IN Architects and Planners, Inc., containing eighty-four (84) pages of text, including the cover, dated October 25, 2006, which is contained as Appendix C of Ordinance No. 2006-25, the contents of which shall be incorporated by reference as part of this section. This section is amended by the addition of paragraph (25) which is set forth in Appendix C to Ordinance No. 2009-18, the contents of which shall be incorporated by reference as a part of this section.

(Ord. No. 2007-33, 12-27-07; Am. Ord. No. 2009-18, 11-18-09)

##### **Sec. 10-162.3 Conflict.**

If the developmental standards for the District, as outlined and contained in the Developmental Plan, are found to be in conflict with the developmental standards found in any other section of the Zoning Ordinance of the Town, the standards found in the Developmental Plan shall prevail.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-162.4 Application Process/Site Plan Review.**

The application and site plan review process shall be governed by Sections 10-159 and 10-130(d)(9) of the Zoning Ordinance of the Town, as amended from time to time.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-162.5 Amendment of Zoning Map.**

The official zoning map, incorporated by reference into the Zoning Ordinance, shall be amended by designating the area described by the map (Appendix A) and legal description (Appendix B) attached to Ordinance No. 2006-25 as a Special Use District - Calumet Avenue Corridor and the same shall be incorporated by reference into the Zoning Ordinance.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-162.6 Public Hearing on Petition; Recommendation.**

a. The Plan Commission shall, after notice as required by the Plan Commission Rules, conduct a public hearing on any petition for a use in the corridor which is not a stated permitted use;

b. The Plan Commission shall, after the public hearing, make a recommendation on the petition to the Town Council. That recommendation shall be a favorable recommendation, unfavorable recommendation, or no recommendation;

c. The decision of the Plan Commission shall be certified to the Town Council which shall vote on the petition within ninety (90) days after certification to the Town Council. If the Town Council does not vote to deny the petition within ninety (90) days, the petition is considered approved;



(Ord. No. 2018-02, 5-24-18)

#### **Sec. 10-163 Building Standards.**

The following building standards shall apply to each use type area within a SUD:

1. **Public.** The construction of open colonnades on open space areas which adjoin Type I and II buildings is permitted.
2. **Sidewalk Sizes and Requirements.** All sidewalk systems shall be handicapped accessible. Sidewalks shall generally be parallel with the streets they adjoin and may be either within the street right-of-way or within an individual lot. The sidewalk's use and maintenance shall be ensured by permanent easement.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-164 Parking.**

##### **a. General Parking Options:**

1. Land area(s) for parking shall be reserved in accordance with the following minimum parking requirements within a SUD. The Dyer Plan Commission, in its discretion, may not require the immediate construction of all of a parking area. The following requirements do not necessarily apply if a Shared Parking option is elected. Parking spaces shall be constructed in accordance with Section 10-132.

(a) **Civic.** Minimum one (1) parking space per one thousand (1,000) square feet of gross building square footage,

(b) **Residential.**

(1) Three fourths ( $\frac{3}{4}$ ) parking spaces per sleeping room for single family (minimum one (1) space required) all fractions greater than one half ( $\frac{1}{2}$ ) equal one (1) space.

(2) One (1) parking space per sleeping room for multi family and lodging.

(c) Restaurants, specialty and private food service, social and health clubs. Minimum one (1) space per two hundred and fifty (250) square feet of seating and/or counter area.

(d) All other uses. Minimum one (1) parking space per one thousand (1,000) square feet of gross floor area, all fractions greater than one half ( $\frac{1}{2}$ ) equal one (1) space.

2. **On street Parking.** Generally, continuous head-in or parallel parking shall be provided along streets in Type II. Parallel parking is permitted along all other streets except Hwy. 30 and where a town ordinance specifies otherwise.

3. **Parking Space Allocation.** For other than shared parking, parking spaces may be considered allocated to a particular lot, or use, if those spaces are entirely on that lot or the use of the spaces has been assured by assignment through easement or other legal guaranty. Street side parking may be allocated to a particular lot when a particular streetside space abuts a particular lot. Where streetside spaces abut more than one (1) lot, a particular parking space may be allocated to a particular lot only if more than sixty six percent (66%) of the space abuts that lot or the space use has been assured by assignment.

4. **Location and Screening of Parking Lots.** Parking lots and areas shall be located at the side or rear of buildings and are prohibited from being located in front yards and on either corner of a corner lot. All parking lots or areas shall be screened to help minimize their view from the street.

(a) Parking lots or parking structures independent of a primary use, shall not be located at street intersections.

(b) Parking lots shall be screened from the sidewalk by walls, fences or solid landscaping six (6) feet in height. All screening must be approved by the Plan Commission. Where parking lots associated with a primary use are located at street intersections the screening requirement shall comply with Section 10-130d.1. in terms of its height.

(c) Adjacent parking lots shall have vehicular and pedestrian connections.

5. **Parking Garage Requirements.** Parking garages or structures built for the purpose of storing four (4) or more vehicles shall be buffered at street level by a commercial use to mitigate potentially detrimental affects to street quality that such structures might otherwise cause. Parking structures at sidewalks shall be fronted by Type II building uses. Automobile entry/exit shall not exceed thirty (30) feet in width.

6. **Ingress/Egress Service Roads.** No parking is permitted on ingress/egress service roads unless the ingress/egress service road is constructed to additional width and approved by the Plan Commission for such use.

7. Garages or carports are allowed only in Type I and shall be located a minimum of twenty (20) feet behind the street facade of the building.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-165 Utilities, Accessory Structures and Garbage.**

Utilities, equipment, accessory structures and the storage of garbage shall not be located in the front yard and shall not be visible from adjacent roadways for all building types.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-166 Non-Conforming Uses.**

a. Existing non-conforming structures located within the SUD classification may be maintained as they existed at the time of passage of this ordinance. Non-conforming uses may be maintained as they existed at the time of passage of this ordinance. A non-conforming use may be extended throughout the structure in which it existed at the time of passage of this ordinance. A non-conforming use may not be extended to areas of the structure which were not a part of the structure at the time of passage of this ordinance. It is the intent of this ordinance to encourage the use of property within the SUD in a manner which conforms to and enhances the outline development plan for the SUD.

b. When any non-conforming use of a structure is abandoned for a period in excess of six (6) months, the structure shall not thereafter be used except in conformance with the regulations of the SUD.

c. Additions to Type I, Residential use structures in place at the time of passage of this ordinance do not need to comply with front and side yard requirements of this ordinance.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-167 Amendment to Zoning Map.**

The official zoning map, incorporated by reference into the Zoning Ordinance, shall be amended by designating the area described by the legal description and map attached hereto as a Special Use District and the same shall be incorporated by reference into the Zoning Ordinance.

(Ord. No. 2007-33, 12-27-07)

##### **Sec. 10-167.1 Special Use District - Sheffield Avenue Corridor.**

a. Application. This section only applies to the area zoned Special Use District - Sheffield Avenue Corridor, as defined and outlined by the site map found in Appendix A of Ordinance No. 2009-17 and the legal description found in Appendix B of Ordinance No. 2009-17, the contents of which are incorporated by reference as part of this section.

b. Developmental standards. The developmental standards for this District, including but not limited to, regulations as to the development, maintenance and use of property within the District, shall be found in the "Sheffield Avenue Corridor Plan" ("Developmental Plan"), containing eighty-four (84) pages of text, including the cover, which is contained as Appendix C of Ordinance No. 2009-17, the contents of which is incorporated by reference as part of this section.

c. Conflict. If the developmental standards for the District as outlined and contained in the Developmental Plan are found to be in conflict with the developmental standards found in any section of the Zoning Ordinance of the Town of Dyer, Indiana, the standards found in the Developmental Plan shall prevail.

d. Application Process/Site Plan Review. The application and site plan review process shall be governed by Sections 10-159 and 10-130(d)(9) of the Zoning Ordinance of the Town of Dyer, as amended from time to time.

e. Amendment of Zoning Map. The official zoning map, incorporated by reference into the Zoning Ordinance, shall be amended by designating the area described by the map (Appendix A of Ordinance 2009-17) and legal description (Appendix B of Ordinance 2009-17) attached hereto as a Special use District - Sheffield Avenue Corridor and the same shall be incorporated by reference into the Zoning Ordinance.

(Ord. No. 2009-17, 11-18-09)

##### **Sec. 10-167.2 Public Hearing on Petition; Recommendation.**

a. The Plan Commission shall, after notice as required by the Plan Commission Rules, conduct a public hearing on any petition for a use in the corridor which is not a stated permitted use;

b. The Plan Commission shall, after the public hearing, make a recommendation on the petition to the Town Council. That recommendation shall be a favorable recommendation, unfavorable recommendation, or no recommendation;

c. The decision of the Plan Commission shall be certified to the Town Council which shall vote on the petition within ninety (90) days after certification to the Town Council. If the Town Council does not vote to deny the petition within ninety (90) days, the petition is considered approved.

(Ord. No. 2018-02, 5-24-18)

### **Division III. Sexually Oriented Businesses.**

#### **Sec. 10-168.1 Policy.**

It is the purpose of this Division III (Sections 10-168.1 through 10-168.22) as amended from time to time, to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious effects of sexually oriented businesses from occurring within the Town. The provisions of this division have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent

or effect of this division to restrict or deny access by adults to sexually oriented materials which are protected by the First Amendment of the United States Constitution or the Indiana State Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this division to, in any way, condone or legitimize the distribution of obscene material or material harmful to minors.

(Ord. No. 2007-33, 12-27-07)

## **Sec. 10-168.2 Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) **Employee.** A person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

(b) **Establishment.** Means and includes any of the following:

- (1) The opening or commencement of any such sexually oriented business as a new business;
- (2) The conversion of an existing business, regardless of whether it currently exists as a sexually oriented business, to any of the sexually oriented businesses defined in this division;
- (3) The addition of any of the sexually oriented businesses defined in this division to any other existing sexually oriented business; or
- (4) The relocation of any such sexually oriented business.

(c) **Knowledge or Knowledge of Such Nuisance.** Having knowledge of the content and character of the patently offensive sexual conduct which appears in the lewd matter.

(d) **Lewd matter.** Any matter which:

- (1) The average person finds, when applying contemporary community standards and when considered as a whole, appeals to the prurient interest; and
- (2) Depicts or describes patently offensive representations simulated; or
  - a. Ultimate sexual acts, normal, perverted, or actual; or
  - b. Masturbation, excretory functions, or the exhibition of the genitals or genital area.

Nothing herein is intended to include or proscribe any matter which, when considered as a whole and in the context in which it is used, possesses serious literary, artistic or political scientific value.

(e) **Matter.** A motion picture film or a publication, or both.

(f) **Motion Picture Film.** Any:

- (1) Film or plate negative; or
- (2) Film or plate positive; or
- (3) Film designed to be projected on a screen for exhibition;
- (4) Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen; or
- (5) Video tape or any other medium used to electronically reproduce images on a screen.

(g) **Nudity or State of Nudity.**

- (1) The appearance of bare human buttocks, anus, male or female genitals, or the areola or nipple of the female breast; or
- (2) A state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

(h) **Operator.** Includes the owner, permit holder, custodian, manager, operator or other person in charge of any permitted or licensed premises.

(i) **Permitted or Licensed Premises.** Any premises that requires a license and/or permit for operation and that is classified as a sexually oriented business.

(j) **Permittee and/or Licensee.** A person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

(k) **Person.** An individual, proprietorship, partnership, corporation, association, organization, or other legal entity.

(l) **Place.** Includes, but is not limited to, any building, structure or place, or any separate part or portion thereof, whether

permanent or not, or the ground itself.

(m) **Public Building.** Any building owned, leased or held by the United States, the State of Indiana, the County of Lake, the Town of Dyer, any special district, school district, or any other agency or political subdivision of the State of Indiana or the United States, which building is used for governmental purposes.

(n) **Public Park or Recreation Area.** Public land which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Town park and recreation authorities.

(o) **Publication.** Includes any books, magazine, article, pamphlet, writing, painting, illustration, picture, sound recording, or motion picture film which is offered for sale or exhibition in a coin-operated machine.

(p) **Regularly.** The featuring of a continuous presentation of sexual material including, but not limited to, films, movies, videos, and the like, depicting specified sexual activities or displaying specified anatomical areas as one of the very objectives of the commercial enterprise.

(q) **Religious institution.** Any church, synagogue, mosque, temple or other building, which is used primarily for religious worship and related religious activities.

(r) **Residential District or Residential Use.** A single family dwelling, duplex, townhouse, multiple family, mobile home park or subdivision as defined in the Town of Dyer Zoning Ordinance.

(s) **Sale.** A passing of title or right of possession from a seller to a buyer for valuable consideration and shall include, but is not limited to, any lease, rental arrangement or other transaction wherein and whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter.

(t) **School.** Any public or private educational facility including, but not limited to, child day-care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, colleges and universities. The term **school** includes the school grounds, but does not include facilities used primarily for another purpose which are only incidentally used as a school.

(u) **Semi-Nude or Semi-Nudity.** A state of dress in which clothing covers no more than the genitals, anus, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

(v) **Sexually Oriented Business.** An adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment, escort agency or nude model studio, each of which are more particularly defined as follows:

(1) **Adult Arcade.** An establishment where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(2) **Adult Bookstore, Adult Novelty Shop or Adult Video Store.** A commercial establishment which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues, or devotes a significant or substantial portion of its interior business or advertising to the sale, rental or viewing, for any form of consideration, of any one (1) or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

b. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

c. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as adult bookstore, adult novelty shop or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty shop or adult video store, so long as one of its principal business purposes is the offering for sale, rental or viewing, for any form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

(3) **Adult Cabaret.** A nightclub, bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

a. Persons who appear nude or in a state of nudity or semi-nudity;

b. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities, or

c. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(4) **Adult Motel.** A motel, hotel or similar commercial establishment which:

a. Offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets, leaflets, radio or television; and

b. Offers a sleeping room for rent for a period of time less than ten (10) hours or allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

(5) **Adult Motion Picture Theater.** A commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

(6) **Adult Theater.** A theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear nude, in a state of nudity or semi-nudity, or live performances which are characterized by exposure of specified anatomical areas or by specified sexual activities.

(7) **Escort.** A person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(8) **Escort Agency.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(9) **Massage Parlor.** Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentation, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of, or in connection with, specified sexual activities, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her specified anatomical areas. The definition of sexually oriented businesses shall not include the practice of massage in or by any licensed hospital, licensed physician, surgeon, chiropractor, osteopath, or any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, or by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program, or by any person so licensed to perform such activities.

(10) **Nude Model Studio.** Any place where a person who regularly appears in a state of nudity or displays specified anatomical areas for money or any form of consideration and is to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

(11) **Sexual Encounter Establishment.** A business or commercial establishment that, as one of its primary business purposes offers, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities or the exposure of specified anatomical areas, or activities when one (1) or more of the persons is in a state of nudity or semi-nudity. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(w) **Specified Anatomical Areas.** Any of the following:

(1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(x) **Specified Sexual Activities.** Any of the following:

(1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;

(2) Sexual acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated;

(4) Human genitals in a state of sexual stimulation, arousal or tumescence; or

(5) Excretory functions as part of, or in connection with, any of the activities set forth in subdivisions (a) through (d) of this subsection.

(y) **Substantial Enlargement of a Sexually Oriented Business.** An increase in the floor areas occupied by a sexually oriented business by more than fifteen percent (15%), as the floor areas exist on the date Ordinance No. 2002-14 takes effect.

(z) **Transfer of Ownership or Control of a Sexually Oriented Business.** Any of the following:

(1) The sale, lease or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or

(3) The establishment of a trust, gift or other similar legal devise, which transfers ownership or control of the business,

except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-168.3 Permit Required.**

(a) No person shall conduct, maintain, operate, or cause to be conducted, maintained, or operated, any sexually oriented business within the corporate limits of the Town without first being licensed under this division.

(b) The Town of Dyer Department of Planning and Zoning, or its designee, is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits for proposed or existing sexually oriented businesses. The Town of Dyer Department of Planning and Zoning, or its designee, is also responsible for ascertaining whether a proposed sexually oriented business for which a permit is being requested complies with all applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of Ordinance No. 2002-14 in the Town and the Town's Comprehensive Plan.

(c) The Town of Dyer Code Enforcement Officer shall be responsible for inspecting a proposed, permitted or non-permitted sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.

(d) An application for a permit must be made on a form provided by the Town of Dyer Department of Planning and Zoning. Any person desiring to operate a sexually oriented business shall file with the Town an original and two (2) copies of a sworn permit application on the standard application form supplied by the Town of Dyer Department of Planning and Zoning, or its designee.

(e) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) In the event that an applicant is:

a. An individual, the individual shall state his/her legal name, and all aliases, and shall submit satisfactory proof that he/she is at least eighteen (18) years of age;

b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

c. A corporation or limited liability company, such entity shall state its complete name, the date of its incorporation or organization, evidence that the entity is in good standing under the laws of the State of Indiana, and the name and address of the individual registered as agent for service of process.

(2) In the event that an applicant intends to operate the sexually oriented business under a name other than that of the applicant, he/she must:

a. Include the sexually oriented business's name in the application;

b. Submit the required Indiana registration documents for said name.

(3) Whether the applicant or any other individual listed in the application holds any other permits and/or licenses under this division or other similar sexually oriented business ordinance from another city, town, county, or state and, if so, the names and locations of such other permitted businesses.

(4) The single classification of permit for which the applicant is filing.

(5) The location of the proposed sexually oriented business, including a legal description of the property, common street address, and telephone number(s), if any.

(6) The applicant's business mailing address.

(7) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(8) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a State of Indiana registered land surveyor depicting the property lines and the structures containing any established existing uses regulated by this division within one thousand (1,000) feet of the property to be certified, the property lines of any established religious institution/ synagogue, school, or public park or recreation area within one thousand (1,000) feet of the property to be certified and the property lines of any residentially zoned area or residential property within one thousand (1,000) feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(9) In the event that a person wishes to operate a sexually oriented business which shall exhibit films, video cassettes or other video reproductions on the premises which depict specified sexual activities or specified anatomical areas, then said person shall comply with the application requirements stated at Section 10-168.14.

(f) Applicants for a permit under this section shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The



failure to comply with said continuing duty within thirty (30) days from the date of such change shall be a valid and lawful basis for suspension of a permit.

(g) In the event that the Town of Dyer Department of Planning and Zoning, or its designee, determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, it shall promptly notify the applicant of such fact and allow the applicant ten (10) days within which to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)

(h) An applicant must be qualified according to the provisions of this division, and the premises must be inspected and found to be in compliance with all applicable health, fire and building codes and laws, and any other applicable federal or state laws.

(i) An applicant shall be required to pay a non-refundable application fee of two hundred fifty dollars (\$250.00) at the time of the filing of an application under this section of this division, as amended from time to time.

(j) Prior to obtaining any permit or license to operate any sexually oriented business deemed in this division, and as part of any application for a permit under this section, an applicant shall obtain from the Town of Dyer Department of Planning and Zoning, or its designee, a certification that the proposed location of such business complies with the Town of Dyer Zoning Ordinance.

(k) The fact that a person possesses other types of state or Town permits and/or licenses shall not exempt him/her from the requirement of obtaining a sexually oriented business permit under this section of this division.

(l) By applying for a permit under this division, an applicant shall be deemed to have consented to the provisions of this division and to the exercise by the Town of Dyer Department of Planning and Zoning, or its designee, and all other Town agencies charged with enforcing the laws, ordinances and codes applicable in the Town, of their respective responsibilities under this division.

(m) An applicant shall be required to provide the Town with the names of any and all employees who are required to be licensed pursuant to Section 10-168.13. This shall be a continuing obligation of an applicant even after a permit is granted or renewed.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.4 Investigation and Application.**

(a) Upon receipt of an application properly filed with the Town, and upon payment of the non-refundable application fee, the Town's Zoning Administrator shall immediately stamp the application as received and shall immediately thereafter transmit photocopies of the application to all Town agencies responsible for enforcement of health, fire and building codes and state and federal laws. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under applicable law and as set forth in this division. Said investigation shall be completed within twenty (20) days of receipt of the application by the Town's Zoning Administrator. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it and, in the event the department or agency recommends disapproval of the application, the reasons therefor.

(b) A department or agency shall recommend disapproval of an application if it finds that the proposed sexually oriented business will be in violation of any provision of any applicable statute, code, ordinance, regulation or other law in effect in the Town. After indicating its recommendation of approval or disapproval of an application, each department or agency shall immediately return the photocopy of the application to the Town's Zoning Administrator, who shall forward the application and any accompanying materials to the Town of Dyer Department of Planning and Zoning for consideration.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.5 Issuance of Permit.**

(a) The Town of Dyer Department of Planning and Zoning, or its designee, shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing. Upon the expiration of said thirty (30) days, and unless an applicant requests and is granted a reasonable extension of time, an applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the Town of Dyer Department of Planning and Zoning, or its designee, notifies the applicant of the denial of the application and states the reasons(s) for that denial.

##### **(b) Grant of Application for Permit.**

(1) The Town of Dyer Department of Planning and Zoning, or its designee, shall grant the application unless one (1) or more of the criteria set forth in subsection (c) below is present.

(2) The permit, if granted, shall state on its face the name of the person, or persons, to whom the permit is granted, the permit's expiration date and the address of the sexually oriented business. The permit shall also indicate that the sexually oriented business shall be subject to prohibitions against public nudity and indecency pursuant to *I.C.*, 35-45-4-1, as amended from time to time. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be read easily at any time.

**(c) Denial of Application for Permit.**

(1) The Town of Dyer Department of Planning and Zoning, or its designee, shall deny the application for any of the following reasons:

- a. An applicant is under eighteen (18) years of age.
- b. An applicant has failed to provide all of the information required by this section or the permit application itself for the issuance of the permit, or has falsely answered a question or request for information on the application form.
- c. The premises to be used for the sexually oriented business have been inspected by the appropriate and responsible Town departments and/or agencies and have been found to be in violation of applicable Town and/or state health, fire and building codes.
- d. The application or permit fees required by this division have not been paid.
- e. An applicant of the proposed sexually oriented business is in violation of, or is not in compliance with, any of the provisions of this division or the Town of Dyer Zoning Ordinance.
- f. The granting of the application would violate a federal or state law, statute, ordinance, or court order.
- g. An applicant knowingly has in his/her employ, an employee who does not have a valid license as required in Section 10-168.13.

(2) In the event that the Town of Dyer Department of Planning and Zoning, or its designee, denies the application, it shall notify an applicant of the denial and state the reasons therefor.

(3) In the event that a person applies for a permit for a particular location within a period of twelve (12) months from the date of denial of a previous application for a permit at that location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reason(s) for denial, the application shall be denied.

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-168.6 Annual Permit Fee.**

The annual fee for a sexually oriented business permit shall be two hundred dollars (\$200.00).

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-168.7 Inspection.**

(a) An applicant or permittee shall permit duly designated representatives of the Town of Dyer and Lake County, Indiana, to enter and inspect the premises of a sexually oriented business for the purpose of insuring compliance with any and all applicable laws, statutes, codes, ordinances, and the like, at any time it is occupied or open for business.

(b) A person who refuses to permit such inspection of the premises at any time that it is occupied or open for business, as described in subsection (a) above, shall be in violation of this division.

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-168.8 Expiration of Permit.**

(a) Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 10-168.03 (for applications for permit renewals, filing of the original survey shall be sufficient). An application for renewal shall be made at least thirty (30) days before the permit expiration date and, when made less than thirty (30) days before the permit expiration date, the expiration of the permit will not be affected.

(b) When the Town of Dyer Department of Planning and Zoning, or its designee, denies renewal of a permit, the applicant shall not be issued a permit under this division for a period of one (1) year from the date of denial. If, subsequent to denial, the Town of Dyer Department of Planning and Zoning, or its designee, determines that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final.

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-168.9 Suspension of Permit.**

(a) The Town of Dyer Department of Planning and Zoning, or its designee, shall suspend a permit for a period not to exceed thirty (30) days if it determines that a permittee, or an employee of a permittee, has:

- (1) Violated or is not in compliance with any section of this division; or
- (2) Been under the influence of alcoholic beverages or any controlled substances while working in or on the premises of the sexually oriented business; or
- (3) Refused to allow an inspection of the premises of the sexually oriented business as authorized by this division; or



(4) Knowingly permitted gambling by any person on the premises of the sexually oriented business; or

(5) Operated the sexually oriented business in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such state or federal statute, code, ordinance or regulation violation, the Town of Dyer Department of Planning and Zoning, or its designee, shall promptly notify the permittee of the violation and shall allow the permittee a three (3) day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of the three (3) day period, the Town of Dyer Department Planning and Zoning, or its designee, shall forthwith suspend the permit and shall notify the permittee of the suspension.

(6) Knowingly employed a person who does not have a valid license as required in Section 10-168.13.

(b) The suspension of the permit shall remain in effect until the violation of the applicable statute, code, ordinance or regulation has been corrected.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.10 Revocation of Permit.**

(a) The Town of Dyer Department of Planning and Zoning, or its designee, shall revoke a permit if a cause of suspension in Section 10-168.9 occurs and the permit has been suspended within the preceding twelve (12) months.

(b) The Town of Dyer Department of Planning and Zoning, or its designee, shall revoke a permit upon determining that:

(1) A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit; or

(2) A permittee or an employee has knowingly allowed possession, use or sale of controlled substances in or on the premises; or

(3) A permittee or an employee has knowingly allowed prostitution on the premises; or

(4) A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended; or

(5) On two (2) or more occasions within a twelve (12) month period, a person, or persons, committed an offense occurring in or on the permitted premises, which offense constitutes a specified criminal act for which a conviction has been obtained and the person, or persons, were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit; or

(6) A permittee is convicted of tax violations for any taxes or fees related to a sexually oriented business; or

(7) A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other specified sexual activities to occur in or on the permitted premises; or

(8) A permittee has operated, or is operating, more than one (1) sexually oriented business under a single roof under the terms of a single permit; or

(9) A permittee has engaged in or attempted to engage in a transfer of permit, in violation of Section 10-168.12.

(c) When the Town of Dyer Department of Planning and Zoning, or its designee, revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for a period of one (1) year from the date the revocation became effective. If, subsequent to revocation, the Town of Dyer Department of Planning and Zoning, or its designee, finds that the basis for revocation under Section 10-168.10 has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date revocation became effective. If the permit was revoked under Section 10-168.10, an applicant may not be granted another permit until the specified number of years required under Section 10-168.5 have elapsed.

(Ord. No. 2007-22, 12-27-07)

#### **Sec. 10-168.11 Judicial Review of Permit Denial, Suspension or Revocation.**

After denial of an application, denial of a renewal of an application, or suspension or revocation of a permit, the applicant or permittee may seek judicial review of the administrative action in Lake County, Indiana, Superior or Circuit Court.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.12 Transfer of Permit.**

(a) A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.

(b) A permittee shall not transfer his/her permit to another person.

(c) A permittee shall not transfer his/her permit to another location.

(d) Any attempt to transfer a permit, either directly or indirectly, in violation of this section is hereby declared void and the

permit shall be deemed revoked.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-168.13 Sexually Oriented Business Employee License.**

(a) Each individual who will be employed in a sexually oriented business, as defined in Section 10-168.2(22), who engages in the services rendered by a nude model studio, escort or escort agency, sexual encounter establishment, massage parlor (except for massage parlors licensed pursuant to applicable provisions of the Dyer Town Code), or a live performer or entertainer, shall be required to obtain a sexually oriented business employee license. Each applicant shall pay a permit fee of twenty-five dollars (\$25.00). Said fee is to cover the reasonable administrative costs of the licensing application process.

(b) Before any applicant may be issued a sexually oriented business employee license, an applicant shall submit on a form to be provided by the Town of Dyer Department of Planning and Zoning, or its designee, the following information:

- (1) The applicant's name and any other names (including "stage" names or aliases) used by the individual;
- (2) Age, and date and place of birth;
- (3) Height, weight, hair and eye color;
- (4) Present business address and telephone number; and
- (5) Acceptable written proof that the individual is at least eighteen (18) years of age.

(c) After the application is completed and filed and the license fee is paid, the Town of Dyer Department of Planning and Zoning, or its designee, shall issue a license unless it finds that one (1) or more of the following findings is true:

(1) The applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a license, or in any report or record required to be filed with the Town of Dyer Department of Planning and Zoning or any other department of the Town;

(2) The applicant is under eighteen (18) years of age;

(3) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this division;

(d) Renewal of License.

(1) A license granted pursuant to this section shall be subject to annual renewal by the Town of Dyer Department of Planning and Zoning, or its designee, upon the written application of the applicant and a finding by the Town of Dyer Department of Planning and Zoning, or its designee, that the applicant has not committed any act during the existence of the previous license period which would be grounds to deny the initial permit application.

(2) The renewal fee for the license shall be the same as the initial application fee.

(Ord. No. 2007-33, 12-27-07)

### **Sec. 10-168.14 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos in Video Booths.**

A person who operates, or causes to be operated, a sexually oriented business, other than a sexually oriented motel/hotel, regardless of whether or not a permit has been issued to said business under this division, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented business permit, an application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, the location of all overhead lighting fixtures and designating any portion of the premises wherein patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place where the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north, or to some designated street or object, and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimension of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Town's Zoning Administrator, or his/her designee, may waive the filing of the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(b) The application shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town of Dyer Department of Planning and Zoning, or its designee.

(d) It is the duty of the owner(s) and operator of the premises to insure that at least one (1) employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access, for any purpose, from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(f) It shall be the duty of the owner(s) and operator of the premises, and it shall also be the duty of any agents and employees present on the premises, to insure that the view area specified in subsection (e) above remains unobstructed by any doors, walls, merchandise, display racks or other materials or persons at all times, and to insure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a) above.

(g) No viewing room may be occupied by more than one (1) person at any one (1) time. No holes, commonly known as "glory holes," shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or restroom.

(h) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access and shall provide an illumination of not less than two (2.0) footcandles, as measured at the floor level. It shall be the duty of the owner(s) and operator of the premises, and it shall also be the duty of any agents and employees present on the premises, to insure that the illumination described herein is maintained at all times that any patron is present on the premises.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.15 Prohibitions Regarding Minors and Sexually Oriented Businesses.**

(a) It shall be unlawful for a person who operates, or causes to be operated, a sexually oriented business, regardless of whether or not a permit has been issued for said business under this division, to knowingly or, with reasonable cause, permit, suffer or allow:

- (1) Admittance of a person under eighteen (18) years of age to the business premises.
- (2) A person who is under eighteen (18) years of age to work at the business premises as an employee.

(b) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished:

- (1) A valid operator's, commercial operator's or chauffeur's license; or
- (2) A valid personal identification certificate issued by the State of Indiana reflecting that such person is eighteen (18) years of age or older.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.16 Advertising and Lighting Regulations.**

(a) It shall be unlawful for the owner or operator of a sexually oriented business, regardless of whether or not a permit has been issued for said business under this division, to do any of the following:

- (1) Advertise the presentation of any activity prohibited by any applicable state statute or local ordinance;
- (2) Display or otherwise exhibit the materials and/or performances at such sexually oriented business in any advertising or any portion of the interior premises which is visible from outside the premises. This prohibition shall not extend to advertising the existence or location of such sexually oriented business.
- (3) Allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner, except to the extent permitted by the provisions of this division.
- (4) Erect, construct, or maintain any sign for the sexually oriented business other than as permitted by the Town of Dyer Zoning Ordinance, as amended from time to time, and as follows:
  - a. Signage shall not contain photographs, silhouettes, drawings or pictorial representations, in any manner, and may contain only the legal name of the sexually oriented business.
  - b. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size, and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- (5) Allow the exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:
  - a. The establishment is a part of a commercial multiunit center; and

b. The exterior portions of each individual unit in the commercial multiunit center, including the exterior portions of the sexually oriented business, are painted the same color as one (1) another, or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multiunit center.

(b) All off-street parking areas and premises entrances to the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1.0) footcandle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises pursuant to Section 10-168.16.

(c) Nothing contained in this section of this division shall relieve the operator(s) of a sexually oriented business from complying with the requirements of the Town of Dyer, commonly known as the Sexually Oriented Business Ordinance, as it may be amended from time to time, or any subsequently enacted Town ordinances or regulations.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.17 Hours of Operation.**

(a) It shall be unlawful for any person to operate, or cause to be operated, a sexually oriented business, regardless of whether or not a permit has been issued for said business under this division, and allow such business to remain open for business or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 10:00 p.m. and 10:00 a.m. of any particular day.

(b) It shall be unlawful for any person, while working as an employee of a sexually oriented business, regardless of whether or not a permit has been issued for said business under this division, to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of 10:00 p.m. and 10:00 a.m. of any particular day.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.18 Nudity at Sexually Oriented Businesses Prohibited.**

No person shall allow public nudity in any sexually oriented business. Any sexually oriented business which is found in violation of this section shall have its permit suspended pursuant to the provisions of Section 10-168.9.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.19 Regulations Pertaining to Live Entertainment.**

(a) For purposes of this section, **live entertainment** is defined as a person who appears nude, semi-nude, or a performance which is characterized by the exposure of specified anatomical areas or by specified sexual activities.

(b) No person shall perform live entertainment for patron(s) of a sexually oriented business establishment, except upon a stage at least eighteen (18) inches above the level of the floor, which stage is separated by a distance of at least ten feet (10) from the nearest area occupied by patron(s). No patron shall be permitted within ten feet (10) of the stage while the stage is occupied by a performer.

(c) The sexually oriented business shall provide separate dressing room facilities for female and male performers that shall not be occupied or used, in any way, by anyone other than performers.

(d) The sexually oriented business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the sexually oriented business shall provide a minimum four (4) foot wide walk aisle for performers between the dressing room area and the stage, which walk aisle shall be equipped with a railing, fence or other barrier separating the patrons and the performers and which prevents any physical contact between patrons and performers.

(e) No performer, either before, during, or after a performance, shall have physical contact with any patron and no patron shall have physical contact with any performer either before, during or after a performance. This subsection shall only apply to physical contact while in or on the premises of the sexually oriented business.

(f) Fixed rails at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons that are required by this section of this division.

(g) No patron shall directly pay or give any gratuity to any performer. A patron who wishes to pay or give a gratuity to a performer shall place the gratuity in a container that is, at all times, located separately from the performers for the purpose of preventing any physical contact between a patron and a performer. No performer shall solicit any gratuity from any patron.

(h) No operator of a sexually oriented business shall cause or allow a performer to engage in any entertainment such as a "couch" or a "straddle" dance with a patron while in or on the premises. No performer shall contract to or engage in a "couch" or "straddle" dance with a patron while in or on the premises. For purposes of this subsection, **"couch" or "straddle" dance** is defined as an employee of the sexually oriented business intentionally touching or otherwise coming within ten feet (10) of any patron while engaged in the display or exposure of any "specified anatomical area" or any "specified sexual activity." For purposes of this subsection, **employee** is defined as it is in Section 10-168.2(1).

(i) This section shall not apply to an employee of a sexually oriented business who, while acting as a waiter, waitress, host, hostess, or bartender, comes within ten (10) feet of a patron. No employee shall engage in any specified sexual activity or display or expose any specified anatomical area while acting as a waiter, waitress, host, hostess, or bartender.

(j) Compliance with this section.

(1) For purposes of this section, **sexually oriented business** is defined as set forth in Section 10-168.2(22). No sexually oriented business shall be considered to be in compliance with this section until the Town's duly designated representative(s) have inspected and approved the premises of the sexually oriented business. The Town shall have ten (10) days from the date it receives written notice from the operator that the premises are ready for inspection to determine if the premises are in compliance with this section. Failure by the Town to determine compliance within ten (10) days of the date it receives notice shall constitute a finding of compliance under this section.

(2) An operator of a sexually oriented business that has been providing live entertainment under a valid sexually oriented business permit shall have the time periods listed below within which to bring the premises into compliance with this section. Failure to do so while continuing to provide live entertainment shall cause the sexually oriented business's permit to be suspended under Section 10-168.9. The permit shall remain suspended until the premises are approved by the Town's duly designated representative(s) as being in full compliance with this section.

(3) An operator of a sexually oriented business that has been operating under a valid permit for another classification of sexually oriented business, and who seeks to provide live entertainment at that sexually oriented business, shall apply for and receive a sexually oriented business permit for the operation of a sexually oriented business providing live entertainment before any live entertainment is provided at that sexually oriented business. No live entertainment permit shall be issued until the sexually oriented business is approved as being in full compliance with this section and all other applicable requirements of this division.

(4) An applicant for a permit to operate a new sexually oriented business who seeks to provide live entertainment shall apply for and receive a sexually oriented business permit for the operation of a sexually oriented business providing live entertainment before any live entertainment is provided. No live entertainment permit shall be issued until the sexually oriented business is approved as being in full compliance with this section and all other applicable requirements of this division.

(5) Compliance with subsection (b) must occur within sixty (60) days from the date this section becomes effective.

(6) Compliance with subsection (c) must occur within ninety (90) days from the date this Section becomes effective.

(7) Compliance with subsection (d) must occur within ninety (90) days from the date this section becomes effective.

(8) Compliance with subsection (e) must occur upon the date this section becomes effective.

(9) Compliance with subsection (f) must occur within sixty (60) days from the date this section becomes effective.

(10) Compliance with subsection (g) must occur upon the date this section becomes effective.

(11) Compliance with subsection (h) must occur upon the date this section becomes effective.

(12) Compliance with subsection (i) must occur upon the date this section becomes effective.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.20 Exemptions.**

(a) It is a defense to prosecution for any violation of this division that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

(1) By a college, junior college or university supported entirely or partly by taxation;

(2) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(3) In a structure:

a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

b. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

c. Where no more than one (1) nude model is on the premises at any one (1) time.

(b) It is a defense to prosecution for a violation of this division that an employee of a sexually oriented business, regardless of whether or not a permit has been issued under this Division III exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.21 Prohibition of Distribution of Sexual Devices.**



(a) It is unlawful for anyone to distribute for commercial purposes, sell or offer for sale, any device, instrument or paraphernalia designed or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

(b) Such devices, instruments or paraphernalia shall include, but are not limited to, phallic shaped vibrators, dildos, muzzles, whips, chains, bather restraints, racks, nonmedical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools of sadomasochistic abuse.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-168.22 Penalties and Injunctive Relief.**

(a) Any person who violates the provisions of this division, as amended from time to time, shall be subject to a fine not to exceed two thousand five hundred dollars (\$2,500) for each violation. Each day of continued violation shall constitute a separate offense.

(b) In addition to seeking penalties against any individual who violates the provisions of this division, as amended from time to time, the Town may commence any and all necessary and appropriate legal action in any court of competent jurisdiction to prevent or remedy any violation or non-compliance with this Division III. This shall include, but is not limited to, seeking an equitable action for injunctive relief against any individuals violating the provisions of this Division III or an action at law for damages, as well as the recovery of attorney fees related to the same.

(c) Nothing herein shall prevent or restrict the Town from prosecuting any violation of this Division III as an ordinance violation in the Town Court and seeking all available remedies permitted thereby.

(d) All remedies and penalties provided for in this section shall be cumulative and independently available to the Town, and the Town shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-169 through Sec. 10-174 Reserved for Future Use.**

### **Division IV. Fences.**

#### **Sec. 10-175 Front Yard Fence Regulations.**

Fences shall not be permitted in any required front yard in any residential district or along the edge of any front yard, unless the Zoning Administrator shall find that the proposed fence is for decorative purposes only such as a split rail fence with a total fence height not greater than forty-eight (48) inches, a picket fence of not more than thirty-six (36) inches in height, or a wrought iron fence also not more than thirty-six (36) inches in height, and that said fence will not obstruct clear vision, and will not be constructed and situated in such a way as to create a safety hazard.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-176 Barbed Wire.**

a. Barbed wire shall not be permitted on any fence in any manner which is located within ten (10) feet of a residential district.

b. Also, where permissible, barbed wire added to the top of any fence will be counted as applying toward the overall height of said fence.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-177 Residential Fences.**

Residential fences shall be limited to a maximum of six (6) feet in height.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-178 Fences in Commercial Districts.**

Fences in commercial districts shall be limited to a maximum height of eight (8) feet.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-179 Fences in Industrial Districts.**

Fences in industrial districts shall be limited to a maximum of ten (10) feet in height.

(Ord. No. 2007-33, 12-27-07)

#### **Sec. 10-180 Front Yard Requirements in Commercial and Industrial Districts.**

Commercial and industrial zoning districts shall be allowed to construct fences in required front yards so long as clear vision can be maintained.

(Ord. No. 2007-33, 12-27-07)

**Sec. 10-181 through Sec. 10-189 Reserved for Future Use.**