

# **Chapter 5: Zoning Ordinance Provisions – Administration and Procedures.**

## **A. General Provisions.**

1. Compliance with Procedures and Standards.
  - a. All development of land and uses of land shall be carried out in accordance with the following in order to achieve orderly, planned, efficient, and responsible growth:
    - i. All applicable regulations and procedures within this UDO;
    - ii. All requirements outlined in the applicable application packet(s), including submittal deadlines;
    - iii. All rules and procedures established by the PC Rules and Procedures and/or BZA Rules and Procedures, including meeting dates or schedule; and
    - iv. Any additional standards, conditions, or commitments that may have been required by the PC, BZA, legislative body, or other permitting entity as part of other or previous approvals for a parcel.
  - b. The regulations of this UDO shall be considered the minimum requirements for the protection of the health, safety, comfort, morals, convenience, and general welfare of the residents of the jurisdiction.
  - c. No building permit or improvement location permit shall be issued for any parcel that does not comply with all provisions of this UDO, including all standards and required procedures.
  - d. The PC and/or BZA may require a traffic impact study to be completed by the applicant when considering applications for zone map changes, development plans, or other applications if the PC determines traffic analysis is needed.

## B. Appeal of Administrative Decision Procedures.

### PROCESS AND PROCEDURES FOR APPEALS

(Any decision/interpretation/order/action made by Staff in applying the standards of the UDO)

#### 1 APPLICATION

Explanation of decision and justification supplied by Staff and Applicant.

#### 2 PUBLIC HEARING

BZA will consider appeal at a public hearing and make a final\* decision.

- **AFFIRM Staff's action with or without conditions**
- **MODIFY Staff's action with or without conditions**
- **REVERSE Staff's action with or without conditions**

\*BZA's decision may be appealed to Circuit or Superior Court

1. Applicability.
  - a. In accordance with IC 36-7-4-918.1 and the BZA Rules and Procedures, the BZA shall hear and determine appeals as outlined in this section.
  - b. As outlined by IC 36-7-4-918.1, the BZA shall hear appeals from and review an appeal for any order, requirement, decision, or determination made by:
    - i. An administrative official, hearing officer, or staff member under the UDO;
    - ii. Other body (except the PC) in relation to the enforcement of the UDO; or
    - iii. An administrative board or other body (except the PC) in relation to the enforcement of an ordinance adopted under this UDO requiring an ILP or BP.
  - c. Appeals shall be made pursuant to and governed by IC 36-7-4-1000 thru 36-7-4-1020.
  - d. Zoning decisions, as outlined in IC 36-7-4-1016, cannot be appealed to the BZA and are subject to judicial review by filing a petition for review in the appropriate court in accordance

with the IC 36-7-4-1600 series. This includes, but is not limited to, final decisions of the BZA, specific decisions of the PC, and those specifically outlined in IC 36-7-4-1016.

2. STEP 1: Application Submittal
  - a. Application Required. The applicant shall submit a complete application for appeal in accordance with the application requirements. The application shall be submitted within thirty (30) days of the decision/interpretation, which is the subject of the appeal.
  - b. Public File. Once the Administrator determines that an application is complete and in proper form, they shall assign a file number, create a public file, and assign a date for public hearing.
  - c. Public Notice by Applicant. Notice of public hearing shall be in accordance with the BZA Rules and Procedures. The Administrator may have the BZA automatically continue the petition to their next regular meeting (or a properly noticed special meeting) without requiring additional notice by the applicant.
3. STEP 2: BZA Public Hearing and Final Decision
  - a. BZA Public Hearing. The BZA shall consider the appeal at a public hearing. The applicant shall be in attendance to present their appeal and address any questions or concerns of the BZA.
  - b. Final Decision by the BZA. The BZA may affirm, reverse, or modify the order, requirement, decision, or determination that is the subject of the appeal. The BZA may also add conditions to this decision.
  - c. Appeal. The decision of the BZA may be appealed to the Circuit or Superior Court of the applicable jurisdiction.

## C. Development Plan Procedures.

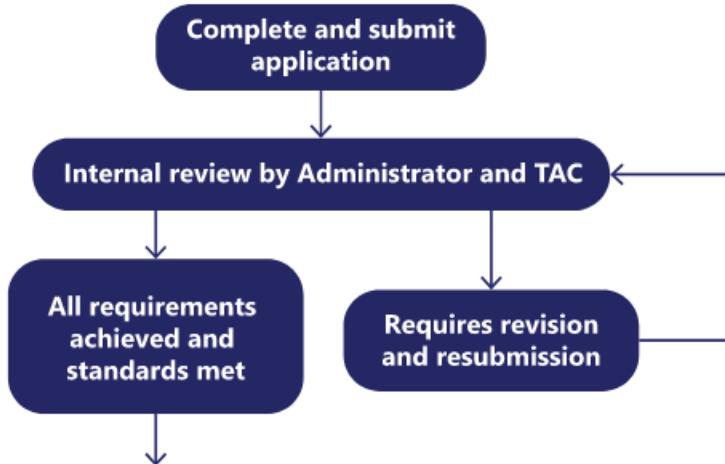
# PROCESS AND PROCEDURES FOR DEVELOPMENT PLANS

(Administrative approval for the development of property for uses other than single- or two-family residential prior to obtaining a building permit, in accordance with IC 36-7-4-1400 series)

### 1 PRE-APPLICATION

Meet with Administrator to discuss proposal and learn about the requirements and process.

### 2 APPLICATION



### 3 ADMINISTRATIVE APPROVAL

Administrator makes decision to approve or deny. The Administrator or applicant may request that the PC consider the application at a public meeting.

Approved

Denied

### 4 CONSTRUCTION & DEVELOPMENT

An approved Development Plan is required in order to apply for an ILP or BP for uses other than single- or two-family residential.

1. Applicability.
  - a. In accordance with IC 36-7-4-1400 series and the PC Rules and Procedures, the PC or Administrator shall consider and make decisions regarding development plans. For purposes of this UDO, development plans are reviewed by the Administrator.
  - b. Development plan approval is not required for single-family or two-family uses unless otherwise stated in this UDO. For all other uses, development plan approval is required for all new primary structures or modifications of a parcel in all zoning districts as required by this UDO.
2. STEP 1: Pre-Application Meeting and Application Submittal.
  - a. Pre-Application Meeting Required. Prior to filing an application for development plan, the applicant shall schedule a required pre-application meeting with the Administrator, which may be held in-person, virtually (video conference), by phone, or by email. This step gives the applicant the opportunity to discuss the procedures for approval with the Administrator as well as the requirements and regulations for development.
  - b. Application Required. The applicant shall submit a complete application for development plan approval in accordance with the application requirements.
  - c. Public File. Once the Administrator determines that an application is complete and in proper form, they shall assign a file number and create a public file.
  - d. Internal Review.
    - i. The Administrator shall forward the plans to the Technical Advisory Committee (TAC) and for technical review and assign a deadline for receiving internal review comments from the TAC. At the discretion of the Administrator, the TAC review can be held in-person, virtually (video conference), by phone, or by email.
    - ii. The Administrator shall compile a written report for the applicant, PC, and the public file with comments from the staff review, TAC, and/or any other reviews, as applicable.
    - iii. After the internal review, the applicant shall make the necessary modifications to the application materials to satisfy the Administrator and resubmit the plans for review.
  - e. Public Notice. No public hearing/comment or public notice is required for development plans. Development plans are administratively approved and do not require a public meeting.
3. STEP 2: Final Decision.
  - a. Decision by the Administrator.
    - i. Approval. If the revised plans adequately addressed the comments from the internal review and the development plan complies with the standards set forth in this UDO, the Administrator shall approve the plan.
    - ii. Denial. If the revised plans have not adequately addressed the comments from the internal review, the Administrator may require additional internal review and/or the resubmittal of revised plans before reconsidering the plans.
    - iii. Comments Contested – Request Decision by PC.

- (a) Request Decision by PC. If the revised plans have not adequately addressed the comments from the internal review because the applicant disagrees with the comment(s), the applicant may submit a request for a public meeting before the PC in writing along with an explanation of disagreement. The Administrator shall also have the right to send a development plan to a public meeting of the PC for final consideration. Upon receipt of this written request, the Administrator shall set a date for a public meeting by the PC.
- (b) Public Notice. Public notice is not required for a development plan decision by the PC.
- (c) Public Meeting. The PC shall consider the development plan at a public meeting. A public hearing and public comment are not required. The applicant or their representative shall be in attendance to present their plan and address any questions or concerns of the PC.
- (d) Decision by the PC. The PC shall consider the contested comments before making a final decision on the development plan. The PC shall approve, approve with conditions, or deny the development plan.

- iv. Final Plans. A development plan is not considered final and ready for construction until revised plans have been received and approved by the Administrator per the terms of the Administrator's or PC's decision.

- b. Expiration. In accordance with IC 36-7-4-1109, approval of a development plan shall be valid for two (2) years from the date of approval.
- c. Amendment. An amendment to a development plan shall follow the same procedures for a new application as outlined in this section for development plan approval.

4. STEP 3: Construction and Development Process.
  - a. Required Permits. After a development plan is approved, the construction of improvements shall occur in accordance with the procedures set forth in Chapter 8, Section E.5: Construction Procedures, Process to Obtain Improvement Location Permits (ILP) / Building Permits (BP). Construction cannot occur and permits cannot be issued prior to development plan approval.

## D. Special Exception and Variance Procedures.

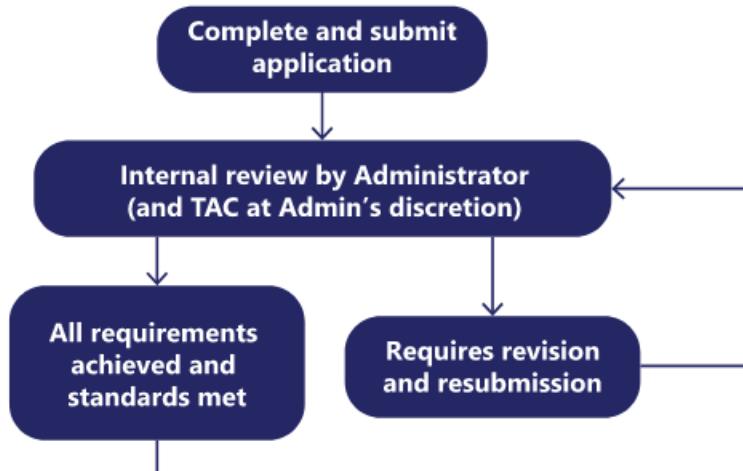
# PROCESS AND PROCEDURES FOR BZA PETITIONS

(Special Exceptions,Variances from Development Standards, and Variances of Use)

### 1 PRE-APPLICATION

Meet with Administrator to discuss proposal and learn about the requirements and process.

### 2 APPLICATION



### 3 BZA PUBLIC HEARING

BZA considers petition and must find that ALL applicable standards are satisfied.



1. Applicability.
  - a. In accordance with IC 36-7-4-918.2 for special exceptions, IC 36-7-4-918.5 for variances from development standards, and the BZA Rules and Procedures, the BZA shall hear and make decisions regarding special exceptions, variances from development standards, and variances of use. The BZA may require that impact studies be performed at the expense of the applicant prior to deciding upon a special exception or variance of use.
  - b. Uses permitted by special exception in the subject zoning district may be permitted by the BZA in the districts indicated in accordance with the procedures set forth in this section.
  - c. The BZA may approve a variance from the required development standards in accordance with the procedures set forth in this section.
  - d. The BZA may approve a variance of use in accordance with the procedures set forth in this section.
2. STEP 1: Pre-Application Meeting and Application Submittal
  - a. Pre-Application Meeting Required. Prior to filing an application for special exception or variance from development standards, the applicant shall schedule a pre-application meeting with the Administrator, which may be held in-person, virtually (video conference), by phone, or by email. This step gives the applicant the opportunity to discuss the procedures for approval with the Administrator as well as the requirements and regulations for development.
  - b. Application Required. The applicant shall submit a complete application for a special exception or a variance from development standards in accordance with the application requirements and prepared in accordance with the requirements of this UDO.
  - c. Public File. Once the Administrator determines that an application is complete and in proper form, they shall assign a file number, create a public file, and assign a date for public hearing.
  - d. Internal Review.
    - i. The Administrator shall forward the application to the Technical Advisory Committee (TAC) for technical review and assign a deadline for receiving internal review comments from the TAC. At the discretion of the Administrator, the TAC review can be held in-person, virtually (video conference), by phone, or by email.
    - ii. The Administrator shall compile a written report for the applicant, BZA, and the public file with comments from the staff review, TAC, and/or any other reviews, as applicable.
    - iii. After the internal review, the applicant shall make the necessary modifications to the application materials to satisfy the Administrator and resubmit the plans for review.
  - e. Public Notice by Applicant. Public notice by the applicant for a public hearing is required and shall be in accordance with the BZA Rules and Procedures. In the event the hearing has been properly noticed, but the plans or application materials are not completed per subsection d: Internal Review above, then the Administrator may have the BZA automatically continue the petition to their next regular meeting (or a properly noticed special meeting) without requiring additional notice by the applicant.

3. STEP 2: BZA Public Hearing and Final Decision.
  - a. BZA Public Hearing. The BZA shall review the special exception or variance from development standards at a public hearing. The applicant or their representative shall be in attendance to present the application and address any questions or concerns of the BZA.
  - b. Basis of Decision by BZA. The BZA shall use the following standards as a basis for their decision:
    - i. Standards for Evaluation for Special Exception. When considering a special exception, the BZA shall find that the following standards have all been satisfied:
      - (a) The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, or general welfare;
      - (b) The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted;
      - (c) The establishment of the special exception will not impede or substantially alter the normal and orderly development and improvement of surrounding property for uses permitted in the district;
      - (d) Adequate utilities, road access, drainage, and other necessary facilities have been or are being provided;
      - (e) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public roadways; and
      - (f) All of the development standards set forth in this UDO that are applicable to such use and associated structures will be met unless the necessary variances have been granted by the BZA.
    - ii. Standards for Evaluation for Variance from Development Standards. Per IC 36-7-4-918.5, when considering a variance, the BZA shall find that the following standards have all been satisfied:
      - (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 ordinance will result in a practical difficulty in the use of the property;
      - (d) The variance requested is for the minimum necessary; and
      - (e) This situation necessitating the variance request shall not be self-imposed, nor be based on a perceived reduction of or restriction of economic gain.
    - iii. Standards for Evaluation for Variance of Use. Per IC 36-7-4-918.4, when considering a variance of use, the BZA shall find that the following standards have all been satisfied:
      - (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 ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- (e) The approval does not interfere substantially with the Comprehensive Plan.

c. Decision by BZA.

- i. Approval. If the BZA finds that ALL of the standards have been satisfied, it shall approve the request or approve the request with conditions and/or commitments. Approved findings of fact shall be included with any approval decision.
- ii. Denial. If the BZA does not find that all of the standards have been satisfied, it shall deny the request and approve findings of fact that specify the reason for denial. The proposal cannot be resubmitted for one (1) year unless the Administrator determines there is a substantial change to the application.
- iii. Conditions and/or Written Commitments. Any decision may include conditions and/or written commitments in accordance with IC 36-7-4-1015 and Chapter 5, Section F.2: Written Commitments.

d. Expiration. Approval of a special exception, variance from development standards, or variance of use shall run with the land, unless any of the following occurs:

- i. Construction of structures, occupancy of existing structures, and/or establishment of the use relevant to the approved special exception or variances has not commenced within two (2) years of approval by the BZA, the approval shall be void;
- ii. BZA places a condition or written commitment upon the approval that identifies an expiration, but such expiration shall not be less than one (1) year; or
- iii. The special exception use or variance of use has not been established within two (2) years of approval.

e. Discontinuance. If a special exception or variance of use is discontinued or abandoned for any reason for more than six (6) months, it shall be deemed a non-conforming use of land. See Chapter 9: Non-conforming Lots, Structures, and Uses.

f. Amendment. A special exception, variance from development standards, or variance of use may only be amended by the BZA by submitting a revised application through the respective application process.

## E. Zone Map Change Procedures.

# PROCESS AND PROCEDURES FOR ZONE MAP CHANGES

(Can be initiated by the PC, the Town Council, or by property owner)

### 1 PRE-APPLICATION

If initiated by property owner(s), applicant must meet with Administrator to discuss proposal and learn about the requirements and process.

### 2 APPLICATION

Complete and submit application

Internal review by Administrator (and TAC at Admin's discretion)

All requirements achieved and standards met

Requires revision and resubmission

### 3 PUBLIC HEARING

PC hears the petition and comments from the public at a Public Hearing.

→ Make a FAVORABLE recommendation with or without conditions/commitments

→ Make an UNFAVORABLE recommendation with or without conditions/commitments

→ Make NO recommendation with or without conditions/commitments

### 4 FINAL ACTION BY TOWN COUNCIL

Town Council considers the petition and PC recommendation at public meeting.

Approve.  
Rezoning is effective.

Deny.  
Rezoning is defeated.

Modify.  
Requires PC review.

Rezoning adopted by ordinance.

Record Conditions/  
Commitments.

1. Applicability.
  - a. In accordance with IC 36-7-4-600 series for zone map changes and the PC Rules and Procedures, the PC shall hear and make recommendations to the respective legislative body regarding zone map changes.
  - b. Zone map changes may be initiated by the PC, legislative body, or by owners of fifty percent (50%) or more of the area involved in the petition.
2. STEP 1: Pre-Application Meeting and Application Submittal
  - a. Pre-Application Meeting Required. Prior to filing an application for a zone map change, the applicant shall schedule a required pre-application meeting with the Administrator, which may be held in-person, virtually (video conference), by phone, or by email. This step gives the applicant the opportunity to discuss the procedures for approval with the Administrator as well as the requirements and regulations for development.
  - b. Application Required. The applicant shall submit a complete application for zone map change in accordance with the application requirements and be prepared in accordance with the requirements of this UDO.
  - c. Public File. Once the Administrator determines that an application is complete and in proper form, they shall assign a file number and create a public file. The Administrator shall announce the tentative date for public hearing before the PC.
  - d. Internal Review.
    - i. The Administrator may forward the application to the Technical Advisory Committee (TAC) for technical review and assign a deadline for receiving internal review comments from the TAC. At the discretion of the Administrator, the TAC review can be held in-person, virtually (video conference), by phone, or by email.
    - ii. The Administrator shall compile a written report for the applicant, PC, and the public file with comments from the staff review, TAC, and/or any other reviews, as applicable.
    - iii. After the internal review, the applicant shall make the necessary modifications to the application materials to satisfy the Administrator and resubmit the plans for review.
  - e. Public Notice by Applicant. Public notice by the applicant for a public hearing is required and shall be in accordance with the PC Rules and Procedures. In the event the hearing has been properly noticed, but the plans or application materials are not completed per Subsection d: Internal Review above, then the Administrator may have the PC automatically continue the petition to their next regular meeting (or a properly noticed special meeting) without requiring additional notice by the applicant.
3. STEP 2: PC Public Hearing and Recommendation by PC.
  - a. PC Public Hearing. The PC shall consider the zone map change at a public hearing. The applicant or their representative shall be in attendance to present the application and address any questions or concerns of the PC.
  - b. Considerations for Decision. In accordance with IC 36-4-603, when considering a zone map change, the PC shall pay reasonable regard to:
    - i. The Comprehensive Plan;

- ii. Current conditions and the character of current structures and uses in each district;
- iii. The most desirable use for which the land in each district is adapted;
- iv. The conservation of property values throughout the jurisdiction; and
- v. Responsible development and growth.

- c. Recommendation by PC to Legislative Body. After consideration, the PC shall make a recommendation to the appropriate legislative body. The PC does not have the final decision on zone map changes.
  - i. Favorable. The PC recommends approval of the proposal to the legislative body.
  - ii. Unfavorable. The PC recommends denial of the proposal to the legislative body.
  - iii. No Recommendation. The PC does not have a recommendation of the proposal to the legislative body.
  - iv. Conditions and/or Written Commitments. Any recommendation may include conditions and/or written commitments in accordance with IC 36-7-4-1015 and Chapter 5, Section F.2: Written Commitments.
- d. Certification of Recommendation. Within ten (10) business days after the PC recommendation, the Administrator shall certify the PC recommendation to the appropriate legislative body.

4. STEP 3: Final Decision.

- a. Decision by Legislative Body (County Commissioners or Town Council). Upon receipt of certification of the PC's recommendation, the appropriate legislative body shall vote on the proposed zone map change within ninety (90) calendar days. Final action by the legislative body shall be in accordance with IC 36-7-4-600 series.
  - i. Approval. If the proposal is adopted by the legislative body, the Administrator shall update the official zoning map accordingly.
  - ii. Denial. If the proposal is denied by the legislative body, the proposal cannot be resubmitted for one (1) year unless the Administrator determines there is a substantial change to the application.
- b. Expiration. Approval of a zone map change shall run with the land unless a condition or written commitment specifies otherwise.
- c. Amendment. A zone map change shall require a new application and only be amended in accordance with the IC 36-7-4-600 series for zone map changes. An amendment of an applicable condition or written commitment shall be done in accordance with IC 36-7-4-1015 and Chapter 5, Section F.2: Written Commitments.

## **F. Other Procedures.**

1. Appeals of PC Decision.
  - a. Decisions of the PC under this UDO shall be subject to judicial review as provided in IC 36-7-4-715, IC 36-7-4-1016, and IC 36-7-4-1600 et seq.
  - b. Pursuant to those statutes, a person with standing may seek judicial review of certain PC decisions by filing a petition for judicial review in the applicable County courts within thirty (30) days after the date of the decision at issue, but only after the person with standing has exhausted any and all available administrative remedies with the PC.
  - c. Nothing in this section expands the rights to review provided by Indiana law.
2. Written Commitments.
  - a. Form. A commitment must be substantiated by the form set forth in the PC or BZA Rules and Procedures and must specifically identify any persons/group/agency who may enforce the commitment. A commitment must be reviewed by the Administrator before it may be recorded.
  - b. Recording. A commitment shall be recorded in the County Recorder's Office by the applicant and takes effect upon the adoption of the proposal by the applicable body to which it relates (even if the commitment is not recorded). Following the recording of a commitment, the applicant shall return a copy of the original recorded commitment to the Administrator for PC's or BZA's file.
  - c. Persons Bound.
    - i. Unless it is modified or terminated by the body who approved the commitment (legislative body, PC, or BZA) in accordance with this section, a recorded commitment is binding on the owner of the parcel, all subsequent owners of the parcel, and any other person who acquires interest in the parcel.
    - ii. An unrecorded commitment is binding on the owner of the parcel who makes the commitment. An unrecorded commitment is binding on a subsequent owner of the parcel or a person acquiring an interest in the parcel only if the subsequent owner or the person acquiring the interest has actual notice of the commitment.
  - d. Modification or Termination by Legislative Body, PC, or BZA. Except for a commitment modified or automatically terminated in accordance with this section, a commitment may be modified or terminated only by a decision of the legislative body, PC, or BZA, who required the commitment (as appropriate) and made at a public hearing after notice of the hearing has been given under the applicable Rules and Procedures.

## **G. Complaints, Violations, and Remedies.**

1. Complaints.
  - a. Whenever a violation of this UDO occurs, or is alleged to have occurred, any person may file a written complaint on the form approved by the PC as part of the adopted PC Rules and Procedures.
  - b. The complaint shall fully state the causes and basis of the alleged violation and shall be filed with the Administrator.

- c. The Administrator or their designee shall have authority to enter upon property at any time to investigate a written complaint.
2. Investigation of Complaints.
  - a. Upon receipt of a complaint that would constitute a violation of the UDO (which shall include adequate information to investigate), the Administrator shall open a violation file and conduct an investigation of the property alleged to be in violation within ten (10) calendar days. The Administrator may also refer the matter to the PC, BZA, or the PC attorney for review.
  - b. Following this initial investigation, the Administrator shall note the findings of the investigation in the file and determine if there is a violation and provide notice as outlined in Chapter 5, Section G.5: Notice of Violation. If the Administrator determines that no violation exists, the violation file shall be closed.
3. ILP Violations.
  - a. Any person or corporation who initiates construction prior to obtaining an ILP, Certificate of Occupancy, Certificate of Completion, or any other permit or authorization required herein, shall pay the fine as set forth in the Fee Schedule.
  - b. The owner or tenant of any building, structure, or premises and any other person who participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties prescribed by this section.
  - c. No ILP or Certificate of Occupancy shall be issued for any building, structure, or improvement unless the location of the building, structure, or improvement conforms to this UDO.
4. UDO Violations.
  - a. No owner or agent of the owner of any parcel of the land located in a proposed subdivision shall transfer, sell, or convey any part of the parcel before a secondary plat of the subdivision has been approved by the PC in accordance with the provisions of these regulations and filed with the Recorder's Office.
  - b. In accordance with IC 36-1-6-2, if a property is found to be in violation of this UDO, the Administrator or their designee may enter onto the property and take appropriate action to bring the property into compliance. Furthermore, continuous enforcement orders as defined in IC 36-7-9-2 can be enforced and liens may be assessed.
  - c. It shall be the duty of the Administrator to periodically research the applicable County records and perform the other necessary investigations to detect any violations of this UDO.
  - d. No public board, agency, commission, official or other authority shall proceed with the construction of or authorize the construction of any of the public improvements required by these regulations until the proposed subdivision has been approved by the PC in accordance with these regulations and filed with the County Recorder except as outlined in this UDO.
  - e. The Administrator shall enforce these regulations and bring to the attention of the PC Attorney any violations or lack of compliance herewith. The PC Attorney shall take steps necessary under the Indiana Code to civilly enjoin any violation of these regulations.

5. Notice of Violation.
  - a. If the Administrator determines that a violation exists, they shall issue a written Notice of Zoning Violation to the legal owner of record, the current occupant/resident, any known mortgagee-in-possession, and any other known person believed to hold a possessory interest in the subject property. The Notice of Zoning Violation shall be provided in the following three (3) ways. If the certified letter is returned undelivered, the other means of notification shall be deemed adequate, and no further notification shall be required.
    - i. Sent by certified mail;
    - ii. Sent by first class mail; and
    - iii. Posted in a conspicuous location at the subject property.
  - b. The Notice of Zoning Violation shall:
    - i. Detail the specific nature of the violation;
    - ii. Cite the section(s) of the UDO allegedly violated;
    - iii. State the penalty / fine that has been assessed;
    - iv. State that the Administrator will waive the fine if the violation is resolved through one of the options outlined in Chapter 5, Section G.6: Options to Remedy a Violation;
    - v. Provide options for remedying the violation;
    - vi. Establish a date not more than fourteen (14) calendar days following the date of mailing of the Notice of Zoning Violation, by which resolution of the violation must occur; and
    - vii. Indicate the possible additional fines and penalties that may accrue if the violation remains unresolved.
6. Options to Remedy a Violation. Upon receipt of a Notice of Zoning Violation, the owner of the subject property shall take one of the following actions no later than the deadline established in the Notice:
  - a. Option 1: Take Corrective Action.
    - i. The owner of the subject property may correct the violation by bringing the property into compliance with the standards of the UDO. Upon correction within the time allotted as stated in the Notice and following a site inspection by the Administrator or their designee confirming compliance, the Administrator shall close the Notice of Zoning Violation case, waive the fine, and notify the person who filed the complaint of the matter via first class mail.
    - ii. At the discretion of the Administrator, a written alternative timeline proposed by the subject property owner may be accepted by the Administrator if there are reasonable circumstances that necessitate additional time, but it shall provide for the full remedy of the zoning violation in a timely and reasonable manner. Examples could include, but are not limited to, paving when asphalt plants are closed for the winter, supply-chain delays in delivering necessary materials, or reasonable lead time to mobilize a contractor. Subsequent deviation from the approved alternative timeline shall result in continuing enforcement activity as prescribed by the UDO.

- b. Option 2: File a Land Use Petition or Appeal.
  - i. The owner of the subject property may file a land use petition with the PC (zone map amendment) and/or BZA (special exception or variance from development standard). No additional enforcement actions shall be performed, and no additional fines shall be imposed while the petition is pending.
  - ii. If the land use petition is denied, withdrawn, or dismissed and the violation continues, enforcement activity shall continue as prescribed by the UDO.
  - iii. If the land use petition or the appeal is approved, the Administrator shall close the Notice of Zoning Violation case, waive the fine, and notify the owner and person who filed the complaint of the matter via first class mail.
- c. Option 3: File an Appeal of the Administrator's Decision.
  - i. The owner of the subject property may file an Appeal of the Administrator's Decision with the BZA to attempt to remedy the violation. Any such petition must be filed in accordance with the applicable procedures by the date indicated on the Notice.
  - ii. As established in IC 36-7-4-1604, a petition for judicial review of a BZA decision may be filed only after exhausting all administrative remedies available. Failure to timely object to a zoning decision or timely petition for review of a zoning decision within the period prescribed waives the right to judicial review.
  - iii. Judicial review of a BZA decision is prescribed and limited by IC 36-7-4-1611.
- d. Failure to Remedy and Ongoing Enforcement.
  - i. If at least ninety (90) days have elapsed from the mailing of a Notice of Zoning Violation and the violation has not been resolved, the Administrator shall record a statement tallying all outstanding fees and fines related to the Notice of Zoning Violation, as provided by IC 36-1-6-2. The statement shall include the name of the owner(s) of the parcel of real property on which fees are delinquent; the legal description of the subject property as shown on the records of the County Auditor; and the amount of the delinquent fees.
  - ii. The statement shall be recorded with the County Recorder, who shall charge a fee for recording the statement under the fee schedule established in IC 36-2-7-10.
  - iii. A lien shall then be placed on the property owner's tax duplicate. The total amount, including any accrued interest and/or recording fees, shall be collected in the same manner as delinquent taxes are collected and shall be distributed to the town's general fund.
  - iv. If the violation is not corrected within thirty (30) days following the imposition of a lien as noted above, a lawsuit may be commenced by the designated enforcement entity in a court of general jurisdiction in Boone County, Indiana, as prescribed in this UDO, IC 36-1-6, and by other applicable laws and ordinances.
- e. Penalties and Fines.
  - i. Any person who violates or fails to comply with any provisions of this UDO shall be guilty of an ordinance violation.

- ii. Upon the issuance of the Notice of Zoning Violation, the owner may be liable for a fine of five hundred dollars (\$500.00). Each violation shall be considered a separate and distinct offense.
- iii. If the jurisdiction is required to institute legal action to enforce this UDO, or to collect a fine thereunder, the violator shall also be responsible for the jurisdiction's reasonable attorney fees and all costs related to the enforcement or collection.
- iv. In addition to the initial fine attached to the Notice of Zoning Violation, the owner of the subject property may be additionally liable for an additional fine of five hundred dollars (\$500.00) per violation per day if the owner has not initiated one of the options to remedy the violation as outlined in this chapter.
- v. All fines prescribed by the section for civil zoning violations shall be paid within fourteen (14) calendar days (or longer as prescribed by the Administrator). Fines shall be made payable to the Town of Thorntown and delivered to the Administrator. Payment of a fine does not allow the violation to continue or constitute a correction of the violation.
- vi. Except as otherwise ordered by a court, the Administrator may, at their discretion and as prescribed in this UDO, waive some or all assessed fines following the full and timely correction of a violation.
- vii. If there is an unresolved violation on a parcel, no building permit application or land use petition may be filed unless it is intended to remedy the violation as allowed by this UDO.

f. Civil Penalties. The seeking of a civil penalty under this chapter does not preclude the PC from seeking alternative and additional relief from a court of competent jurisdiction in the same action or from seeking any other relief provided by law in a separate action for the enforcement of this UDO.

g. Suit for Injunction. The PC, the BZA, the Administrator, any designated enforcement official, or any person or persons, firm, or corporation, jointly or severally, may institute a suit for injunction in the Circuit or Superior Courts of Boone County to restrain an individual, corporation, or government unit from violating the provisions of this ordinance. The PC or BZA may also institute the suit for mandatory injunction directing an individual or corporation or a governmental unit to remove a structure erected in violation of the provisions of this ordinance or the requirements thereof, or to enforce any other provision of this ordinance, and said violation being declared to be a common nuisance and as such may be abated in such a manner as nuisances are now or may hereinafter be abated under existing law.

7. Stay of Work Pending Appeals, Restraining Order, and Enforcement Stay.

- a. Stop Work during an Appeal of Administrative Decision.
  - i. When an appeal from the decision of the Administrator has been filed with the BZA, all proceedings and work on the premises affected shall be stayed (stopped) unless the Administrator certifies to the BZA that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In that case, proceedings or work may not be stayed except by restraining order.
  - ii. After the owner, or a person in charge of the work on the premises affected, has received notice that an appeal has been filed, the entity charged with the enforcement of the UDO

may order the work stayed (stopped) and may call on the police power of the municipality to give effect to that order.

- b. Restraining Order. After notice to the Administrator or BZA and to the owner of the premises affected and after due cause is shown, the Circuit or Superior Court in which the premises affected are located may grant the restraining order.
- c. Attorney's Fees. Notwithstanding anything contained in this UDO to the contrary or appearing to be to contrary, and in addition and supplementary to other provisions of this UDO, if the PC, BZA or the jurisdiction is required to utilize the services of the respective Attorney or any other attorney in investigating a possible violation of this UDO or enforcing the provisions of this UDO before any board or a court (including appeals), and such investigation results in a determination that a violation has occurred or if the BZA or jurisdiction is successful in its enforcement of the UDO by way of suit, appeal, or other appropriate proceeding, the respondent, defendant, or party investigated for a violation shall pay the jurisdiction's reasonable attorney fees and all costs related to the investigation of the violation and/or the enforcement of this UDO, unless such attorney fees or costs are specifically waived by the legislative body.

## **H. Fee Schedule.**

- 1. Applicability. Applications and petitions filed pursuant to the provisions of this UDO shall be accompanied by the applicable fee(s) specified in the adopted Fee Schedule. Fees shall be collected by the Administrator and shall be made payable to the Town of Thorntown.
- 2. Collection of Fees.
  - a. Improvement Location Permits and Building Permits. Fees will be calculated during the review process and shall be collected prior to the ILP being issued. Fees associated with re-inspections and additional inspections shall be collected prior to a final inspection or issuance of a certificate of occupancy, as applicable. ILP and BP fees are non-refundable.
  - b. Land Alteration Permit Fees. Fees will be calculated during the review process and shall be collected prior to the LAP being issued. LAP fees are non-refundable.
  - c. PC and BZA Application Fees. Fees for all PC and BZA applications shall be collected at the time the application is filed. Application fees are non-refundable.
  - d. Erroneously Paid Fees. Fee paid in error may be refunded at the discretion of the Administrator.