

## CHAPTER 153: ZONING

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**GENERAL PROVISIONS**

**§ 153.001 TITLE.**

The official title of this chapter is the Zoning Ordinance of Perry County, Indiana.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.002 EFFECTIVE DATE.**

This chapter shall take effect January 1, 1998.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.003 AUTHORITY.**

This chapter is adopted pursuant to Chapter 174 of the Acts of the General Assembly of Indiana, 1947, and all acts supplemental and amendatory thereto.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.004 COMPLIANCE.**

No structure shall be located, erected, constructed, reconstructed, moved, converted or enlarged; nor shall any structure or land be used or be designed to be used, except in full compliance with all the provisions of this chapter and after the lawful issuances of the permits required by this chapter.

(Ord. O-C-97-10, passed 12-22-1997) Penalty, see § 153.999

### **§ 153.005 JURISDICTION AREA.**

(A) This chapter shall apply to all unincorporated land within the county, except that in accord with state law, the Board of County Commissioners may, by ordinance, authorize a city or town to establish jurisdiction over all or any part of the unincorporated land within two miles from the corporate limits of the city or town. If a city or town is authorized to exercise jurisdiction, the exact jurisdictional area shall be indicated on the appropriate county zone map on file in the office of the County Plan Commission in the county courthouse.

(B) The jurisdiction area of the county is hereby amended to eliminate therefrom the following areas which have been included in the jurisdictional area of the Tell City's zoning regulations:

Starting at the southwest corner of fractional Section 5, Township 6 Range 3 West in the Ohio River; thence east along the south boundary line of fractional Section 5 and the south boundary line of Section 4, Township 6 South, Range 3 West to a point where the line intersects with County Road 55, now named Sycamore Road; thence northeasterly with Sycamore Road to its intersection with State Road 237, thence northerly with State Road 237 to the south boundary line of Section 33, Township 6 South, Range 3 West, also being County Road 62, now named Boundary Way Road; thence east along the south line of Section 33 and Section 34, Township 6 South, Range 3 West to the southeast corner of Section 34; thence north along the east section lines of the aforementioned Section 34 and Section 27, Township 6 South, Range 3 West and Section 22, Township 6 South, Range 3 West to the northeast corner of Section 22; thence west along the north section lines of Section 22 and Section 21, Township 6 South, Range 3 West, to where it intersects County Road 72, also known as Troy Ridge Road; thence westerly with Troy Ridge Road to where it intersects with the west section line of Section 18, Township 6 South, Range 3 West; thence south along the west section line of Section 18 to the Ohio River; thence with the river southeasterly to the place of beginning.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-97-11, passed 12-22-1997)

### **§ 153.006 APPLICATION.**

It is not intended by this chapter to interfere with, abrogate or amend any existing easements, covenants or other agreements between parties, nor is it intended by this chapter to repeal, abrogate, annul or in any way interfere with any existing provisions of laws or ordinances, or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises than is imposed or required by the existing provisions of law or by the rules, regulations, agreements, covenants or permits, the provisions of this chapter shall control; but where private covenants, permits, agreements, rules or regulations impose a greater restriction than is imposed by this chapter, the greater restrictions shall control.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.007 SUBDIVISION OF LAND.**

The subdivision of land may occur in any zoning district described in this chapter. All subdivision of land in areas under the jurisdiction of this chapter shall be in accordance with the provisions of the subdivision control regulations then in effect for the county.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.008 SEWAGE DISPOSAL.**

No building permit shall be issued for the construction of any building or residence where the property is not served by a public sewage system, until the applicant demonstrates, to the satisfaction of the Zoning Administrator, compliance with County Ordinance 1979-2, as codified in Chapter 51 of this code of ordinances, which regulates the installation, construction, maintenance and operation of private sewage disposal systems.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.009 FLOOD HAZARD AREAS.**

No building permit shall be issued for the construction of any building or residence where the property is effected by the State Model Ordinance for Flood Hazard Areas, adopted as Ordinance O-C-05-2 by the Board of County Commissioners of the county, which is an ordinance adopted by the Commissioners on September 15, 2005, as codified in Chapter 150 of this code of ordinances. This is an ordinance to guide development in flood hazard areas in the county in order to reduce the potential for loss of life and property, reduce the potential for health and safety hazards and to reduce the potential for extraordinary public expenditures for flood protection and relief.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.010 MASTER PLAN.**

The County Commissioners have approved and adopted a resolution of the County Planning and Zoning Board which contains a Master Plan for the county.

(1984 Code, § 17-2)

## § 153.011 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the present tense shall include the future; the singular number shall include the plural, and the plural the singular; and the word **SHALL** is mandatory and not permissive.

**ACCESSORY USE.** A use customarily incidental and subordinate to the principal use and located in the same lot as the principal use.

**AGRICULTURE.** Any use of land or structures for farming, dairying, pasturage, agriculture, horticulture, floriculture, arboriculture or animal or poultry husbandry. Accessory uses permitted in conjunction with an agricultural use may include barns, stables, com cribs, silos and any other use or structure that is clearly a part of an agricultural operation.

**AREA.** The **AREA** of a lot or site shall be calculated from dimensions derived by horizontal projection of the site.

**BASEMENT.** A story having more than 50% of its clear height below finished grade.

**BILLBOARD.** A billboard or other sign with a commercial message related to goods, services or other commercial transactions not offered on the premises on which the sign is located.

**CABARET OR THEATER, SEXUALLY ORIENTED.** A building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to adult entertainment, strippers, showgirls, exotic dancers, gentleman's club, XXX or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.

**CAMPGROUND.** Any area or tract of land used or designed for occupancy by tents, motor homes, travel trailers, truck campers, campers or any similar device, or any dwelling not suitable for year-round human occupancy. A **CAMPGROUND** shall consist of two or more units.

**CLINIC.** Any establishment where human patients are examined and treated by doctors or dentists but not hospitalized overnight.

**CLUB (PRIVATE).** An establishment operated for social, recreational or educational purposes, but open only to members and not the general public. This includes, but is not limited to, resorts, fishing clubs, gun clubs, athletic clubs, sportsmen clubs or entities of a like nature.

**COMMERCIAL MESSAGE.** A sign, wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

**COUNTY.** Perry County, Indiana.

**COVERAGE.** The percentage of the lot area covered by principal and accessory use structures.

**DWELLING UNIT.** Any structure or part of a structure designed or used as the living quarters for one family having a minimum gross public floor area of 800 square feet. The Zoning Administrator may issue a permit for a structure used as living quarters for one family having a minimum gross public floor area of 480 square feet including porches or decks covered by a roof, if it is demonstrated to the satisfaction of the Zoning Administrator that the dwelling will be used only for seasonal and recreational purposes. A mobile home shall have a minimum gross public floor area of 500 square feet.

**ENTERTAINMENT, SEXUALLY ORIENTED.** Any of the following activities, when performed by a sexually oriented entertainer at a sexually oriented business that is required to be licensed: dancing, singing, talking, modeling (including lingerie or photographic), gymnastics, acting, other forms of performing or individual conversations with customers for which some type of remuneration is received.

**ERECTED.** Includes the placement, building, construction, reconstruction or other action involved in creating a new sign at a particular location or in replacing a sign. It does not include a mere changing of the face of an existing sign where there is no change in the surface area or height of the sign.

**ESSENTIAL SERVICES.** The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

**ESTABLISHMENT.** A premises used as a place of business and the business that operates there, regardless of how it is denominated. An **ESTABLISHMENT** may be operated by any person or group of persons and may be a sole proprietorship, a partnership, a limited liability corporation, a corporation, or some combination thereof. The intent of this definition is to include any place of business operating in the county.

**FAMILY.** One or more persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house or lodging house, club, fraternity or hotel.

**FLOOR AREA, GROSS PUBLIC.** The total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from other areas, restrooms (whether or not labeled public), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways and entryways serving those areas.

**FREQUENTLY.** Two or more times per month.

**HEAVY AND SPECIAL INDUSTRIAL.** Heavy and special industrial uses are ones which require both buildings and open areas for manufacturing, fabricating, processing, extraction, heavy repairing, dismantling, storage or disposal of equipment, raw materials, manufactured products or wastes.

**HOME OCCUPATION.** An occupation carried on in a dwelling which is clearly incidental and secondary to the use of the building for dwelling purposes, and which does not change the character thereof.

**LEGIBLE.** As related to regulations of signs, means that a message can be comprehended by a person with eyesight adequate to obtain a current state driver's license standing in the public way or other location from which **LEGIBILITY** is to be determined. Where these facts are material, it shall be presumed that the observation takes place in daylight hours, and that the person making the observation is standing and is between five feet two inches and six feet tall.

**LIGHT INDUSTRIAL.** A light industrial use is one which ordinarily uses only light machinery, is conducted entirely within enclosed substantially constructed buildings, does not use the open area around the buildings for storage of raw materials or manufactured products or for any other industrial purpose, other than loading and unloading operations.

**LOT.** A parcel of land occupied or capable of being occupied by one or more structures.

**LOT, MINIMUM AREA OF.** The horizontally projected area of a lot computed exclusive of any thoroughfares.

**LOT OF RECORD.** Any lot which individually or as part of a subdivision, has been recorded in the office of Recorder of Deeds of the county.

**LOT, WIDTH OF.** The mean width measured at right angles to its depth.

**MASSAGE.** Touching, stroking, kneading, stretching, friction, percussion and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).

**MASSAGE PARLOR.** Any business offering massages that is operated by a person who is not a state licensed massage therapist or that provides massages by persons who are not massage therapists certified by the American Massage Therapy Association or the Bodywork and Massage Associated Professionals.

**MASSAGE THERAPIST.** A person certified as a massage therapist by the American Massage Therapy Association or the Bodywork and Massage Associated Professionals.

**MASSAGE THERAPY.** The profession in which a certified massage therapist applies massage techniques with the intent of positively affecting the health and well being of the client.

**MEDIA.** Anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. **MEDIA** includes, but shall not necessarily be limited to, books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, DVDs, other magnetic media and undeveloped pictures.

**MEDIA, SEXUALLY ORIENTED.** Magazines, books, videotapes, movies, slides, CDs, DVDs or other devices used to record computer images or other media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**MEDIA STORE WITH SEXUALLY ORIENTED MEDIA.** A retail book, video or other media store that has sexually explicit media that constitutes more than 5% but not more than 30% of its inventory or that occupies more than 5% but not more than 30% of its gross public floor area.

**MEDIA STORE, SEXUALLY ORIENTED.** An establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests:

- (1) More than 30% of the gross public floor area is devoted to sexually oriented media;
- (2) More than 30% of the stock in trade consists of sexually oriented media; or
- (3) It advertises or holds itself out in any forum as a XXX, adult or sex business or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater or sexually oriented cabaret.

**MOBILE HOME.** Any mobile vehicle used or designed to be used for living purposes; whether the wheels are attached or not.

**MOTION PICTURE THEATER, SEXUALLY ORIENTED.** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are frequently shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas or that are marketed as or offered as adult, XXX or sexually oriented. Frequently shown films, motion pictures, videocassettes, slides or

other similar photographic reproductions as characterized herein do not include sexually oriented speech and expressions that take place inside the context of some larger form of expression.

**MOTOR VEHICLE SALVAGE YARD.** A place where inoperable motor vehicles, or parts thereof, are accumulated and are or may be salvaged for reuse or re-sale, or sold for parts or scrap metal.

**NONCONFORMING STRUCTURES.** A structure designed, converted or adapted for a use prior to the adoption of provisions prohibiting that use in that location.

**NONCONFORMING USE.** Any use or arrangement of land or structures legally existing at the time of enactment of this chapter or any of its amendments, which does not conform to the provisions of this chapter.

**NUDITY or STATE OF NUDITY** The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernibly turgid state. See also **SEMI-NUDE**.

**PERSON** An individual, firm, partnership, joint-venture, association, independent contractor, corporation (domestic or foreign), limited liability company, trust, estate, assignee, receiver or any other group or combination acting as a unit.

**PLANNED UNIT RESIDENTIAL PROJECT.** Any scheme or plan whereby a single tract or parcel of land, or any part thereof, is divided, either simultaneously or in a series of separate transactions having a common scheme or plan, into two or more lots, tracts or parcels of land for the purpose, whether immediate or future, of the transfer of ownership for residential purposes, or for the construction of any structure thereon which may be used for human habitation, whether for year around use or recreational use. No lot in a planned unit residential project may be sold until the property meets all requirements which may be imposed by the Board of Zoning Appeals pursuant to § 153.053.

**PREMISES.** The physical location at which a business operates; as used in this chapter, the term shall include all parts of that physical location, both interior and exterior, which are under the control of the subject business, through ownership, lease or other arrangement.

**RIGHT-OF-WAY.** A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts and bridges.

**SADOMASOCHISTIC PRACTICES.** Flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed or naked.

**SALVAGE YARD (OTHER THAN MOTOR VEHICLE).** A place where discarded property (but excluding motor vehicles or any part thereof) is accumulated and is or may be salvaged for reuse or re-sale or sold for scrap.

**SEMI-NUDE or IN A SEMI-NUDE CONDITION.** The showing of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other apparel; provided the areola is not exposed in whole or in part.

**SEX SHOP.** An establishment offering goods for sale or rent and that meets any of the following tests:

- (1) It offers for sale items from any two of the following categories:
  - (a) Sexually oriented media;
  - (b) Lingerie;
  - (c) Leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; and/or
  - (d) The combination of those items constitute more than 10% of its stock in trade or occupies more than 10% of its floor area.
- (2) More than 5% of its stock in trade consists of sexually oriented toys or novelties; or
- (3) More than 5% of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

**SEXUALLY-EXPLICIT MATERIAL.** Any pictorial or three-dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation of unclothed genitals, sadomasochistic abuse or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or material of anthropological significance shall not be deemed to fall within the foregoing definition.

**SEXUALLY ORIENTED BUSINESS.**

- (1) An inclusive term used to describe collectively the following businesses:
  - (a) Sexually oriented cabaret or theater;
  - (b) Sexually oriented entertainment;
  - (c) Sexually oriented motion picture theater;

- (d) Sexually oriented motion picture arcade;
- (e) Sexually oriented encounter center;
- (f) Sexually oriented media store;
- (g) Sexually oriented escort bureau;
- (h) Bathhouse;
- (i) Massage parlor;
- (j) Sex shop;
- (k) Sexually oriented modeling studio; or
- (l) Any other business establishment whose primary purpose is to offer sexually oriented entertainment or materials.

(2) This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the county or any applicable municipal zoning code or other applicable ordinances.

**SEXUALLY ORIENTED TOYS OR NOVELTIES.** Instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs.

**SIGN.** Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or marks or combinations thereof, by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a business, a commodity or product which are visible from any public way and used as an outdoor display, including any base or supporting structure.

**SIGN, CHANGEABLE COPY ELECTRONIC.** A sign or portion of a sign designed so that the message or copy could be changed frequently and which contains a display of letters, characters, figures or illustrations that can be rearranged altered or manipulated without altering the face or surface of the sign by electrical, electromechanical, electronic or computerized process. This definition includes signs using LED or other video technology.

**SIGN, CHANGEABLE COPY MANUAL.** A sign such as a bulletin board, public announcement device or message center where letters, figures, numbers or combinations thereof which are not permanently affixed to the structure, framing or background and where the message is manually replaced or altered periodically.

**SIGN, DETACHED.** A sign which is supported by one or more poles, pylons, columns, platforms, uprights or braces in the ground and is not attached to a building or structure. Also known as a ground sign, pole sign or monument sign.

**SIGN, DIMENSIONS.**

(1) *Height.* The vertical distance from the finished grade at the base of the supporting structure to the top of the sign, or its frame or supporting structure, whichever is higher.

(2) *Surface area.* The entire area within a regular geometric form or combinations of regular geometric forms comprising all of the display area of the sign and including all of the elements of the matter displayed. Structural frames and members not bearing advertising matter shall not be included in computation of surface area.

**SIGN, NONCONFORMING.** A sign in existence on the date of adoption of this chapter and that is not in conformance with the requirements of this chapter.

**SIGN, OFF-PREMISES.** See **BILLBOARD**.

**SIGN, PERMANENT.** A sign permanently affixed to a building or the ground.

**SIGN, PORTABLE.** Any sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including, but not limited to:

- (1) Signs designed to be transported by means of wheels;
- (2) Signs made as A-frames or T-frames;
- (3) Menu and sandwich board signs;
- (4) Balloons used as signs;
- (5) Umbrellas used for commercial messages; and
- (6) Signs attached to or painted on vehicles parked and visible from the public right-of-way, unless the vehicle is used in the normal day-to-day operations of the business.

**SIGN, TEMPORARY.** Any sign that is used only for a short, specifically limited time and that is not permanently mounted.

**SIGN, WALL.** Any sign painted on or attached to and erected parallel to the face of, or erected and confined within the limits of, the outside wall of any building and supported by the wall or building and which displays only one advertising surface.

**SIGN, WINDOW.** Any sign placed inside or upon a window facing the outside and which is legible from the exterior.

**SOLID MUNICIPAL WASTE TRANSFER STATION.** A place for the loading, unloading and transfer from one mode of transportation to another mode of transportation, trash and other wastes of a type generated by households and small businesses, including those collected by any municipality or any contractor performing a service similar to municipal waste collection. Further provided that the facility shall meet all requirements imposed by local state and federal regulatory agencies.

**SPECIFIED ANATOMICAL AREAS.** Parts of the human body, including:

- (1) Less than completely and opaquely covered human genitals, pubic region or the areola or nipple of the female breast;
- (2) Human male genitals in a disceimibly turgid state, even if completely and opaquely covered; and
- (3) Areas of the human anatomy included in the definitions of nudity or state of nudity.

**SPECIFIED SEXUAL ACTIVITIES.** Acts of human masturbation, sexual intercourse or sodomy. These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human analingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This definition shall include apparent sexual stimulation of another person's genitals whether clothed or unclothed.

**STRUCTURE.** Anything constructed or erected, the use of which requires a fixed location on the ground, including buildings, billboards, carports, porches and other building features but not including sidewalks, drives, fences and patios.

**SUPPLY YARDS.** A commercial establishment storing or offering for the sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods. **SUPPLY YARDS** do not include the wrecking, salvaging, dismantling or storage of automobiles and similar vehicles.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-07-6, passed 10-9-2007)

## DISTRICT REGULATIONS

### § 153.025 ZONE MAPS.

A zone map of each township in the county is hereby adopted as a part of this chapter. The zone maps shall be kept on file available for examination at the office of the County Plan Commission in the zoning office.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-97-11, passed 12-22-1997; Ord. O-C-05, passed 12-5-2005)

### § 153.026 ZONING DISTRICTS.

The jurisdictional area of the County Plan Commission is divided into the districts stated on the zone maps. The districts are:

C-1 Conservation
A-1 Agricultural
R-1 Residential
R-2 Residential
B-1 Business
B-2 Business
I-1 Industrial
I-2 Industrial
I-3 Industrial
Scenic
Scenic Corridor Overlay District

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-07-8, passed 10-22-2007)

### § 153.027 DISTRICT BOUNDARIES.

District boundaries shown within the lines of roads, streams and transportation right-of-way shall be deemed to follow the centerlines. The vacation of streets shall not affect the location of district boundaries. When the Zoning Administrator cannot definitely determine the location of a district boundary by centerlines, by the scale or dimensions stated on the zone map or by the fact that it clearly coincides with a property line, he or she shall refuse action, and the Board of Zoning Appeals, upon appeal, shall interpret the location of the district boundary with reference to the scale of the zone map and the purposes set forth in all relevant provisions of this chapter.

(Ord. O-C-97-10, passed 12-22-1997)



### **§ 153.028 CONSERVATION DISTRICT.**

The district designated for Conservation, C-1, is limited to agricultural, recreational and certain other open land uses. The purpose of this district is to prevent intensive development of land that is unsuitable for development because of topography, soil conditions or periodic flooding.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.029 AGRICULTURAL DISTRICT.**

(A) The district designated for agricultural use, A-1, is intended to preserve and protect agricultural land from undesirable urban growth while permitting limited residential development on large-size lots which provide adequate space for private water and sewerage facilities.

(B) Planned residential subdivisions with smaller size lots may be approved by the Board of Zoning Appeals if the development provides for common utilities systems and meets the requirements of § 153.053.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.030 SCENIC DISTRICT.**

The district designated as Scenic are those areas otherwise designated as Agricultural A-1 and Conservation C-1 which lie within 250 feet on either side of State Highway 66 between the intersection of State Highways 66 and 166 in Section 7, Township 7 South, Range 2 West, and the intersection of Highway 66 with the north line of Section 1, Township 4 South, Range 1 West. The Scenic District is designed to provide sufficient spacing between residences and other permitted uses, to preserve the scenic qualities in the designated areas.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.031 RESIDENTIAL DISTRICTS.**

Districts designated for residential use, R-1 and R-2, are limited to dwellings and public or semi-public uses which are normally associated with residential neighborhoods. The only new uses permitted in the residential districts are those which would not detract from the residential character of the neighborhood. The purpose of these districts is to create an attractive, stable and orderly residential environment. However, the families per dwelling and the lot and yard requirements are different in the two districts to provide for the various housing needs and desires of the citizens of the county.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.032 BUSINESS DISTRICTS.**

(A) *Generally.* The districts designated for business, B-1 and B-2, are limited to business.

(B) *Performance standards for uses in Business District.* All uses within the B-1 and B-2 Business Districts shall conform with the following performance standards.

(1) *Smoke.* No smoke is emitted of a density greater than No. 1 according to the Ringlemann's Scale, except that smoke of a density not in excess of No. 2 of Ringlemann's Scale shall be permitted for a period not in excess of six minutes in any hour.

(2) *Fly ash.* No particles from any flue or smokestack shall exceed 0.2 grains per cubic foot of flue gas at a stack temperature of 500°F.

(3) *Dust.* No dust of any kind produced by the business operations shall be permitted to escape beyond the confines of the building in which it is produced.

(4) *Odor.* No noxious odor of any kind shall be permitted to extend beyond the lot lines.

(5) *Gasses and fumes.* No gasses or fumes, toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.

(6) *Glare.* No glare shall be seen from any street or any residential area.

(7) *Vibration.* No intense earth shaking vibration shall be created or maintained by any business beyond the boundary line of the tract on which it is located.

(8) *Noise and sound.* A maximum of 70 decibels at the property line is permitted. Noise is required to be muffled so as not to become objectionable due to intermittence, beat frequency or shrillness. Sound may equal but not exceed street traffic noise in the vicinity during a normal day shift work period.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.033 INDUSTRIAL DISTRICT.**

The districts designated for industry, I-1, I-2 and I-3, provide suitable space for existing industries and their expansion as well as for future industrial development and for specific intensive commercial uses. Performance standards, parking

specifications and yard regulations are set forth in this chapter in order to ensure development that is generally compatible with adjacent uses and that includes specific design and operational elements to limit the negative impacts on adjacent and other nearby uses.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-07-6, passed 10-9-2007)

**§ 153.034 SCENIC CORRIDOR OVERLAY DISTRICT.**

(A) The Scenic Corridor Overlay District shall apply to all properties within 1,000 feet of either side of the centerline of the following roads and highways:

- (1) State Road 145 for a distance of one mile north and one mile south of its junction with Interstate 64; and
- (2) State Road 37 for a distance of one mile north and one mile south of its junction with Interstate 64.

(B) Development within the designated scenic corridor shall comply with the provisions of this chapter in addition to the district within which the property is located as noted on the zoning maps. If there is a conflict between the regulations of the Scenic Corridor Overlay District and the regulations of another district which applies to the property, the regulations of the Scenic Corridor Overlay District shall apply.

(C) All new development within the Scenic Corridor Overlay District shall comply with the provisions of this chapter, except that the following shall be exempt from compliance with this chapter:

- (1) Existing farm or agricultural-related structures;
- (2) Future farm or agricultural-related structures;
- (3) Existing single-family dwellings and manufactured homes on an existing lot of record;
- (4) Future single-family dwellings of the type permitted by this chapter; and

(5) With respect to completed development existing on the effective date of this chapter, except for development described in divisions (C)(1) through (C)(4) above, any new or additional improvements to the real estate shall be subject to compliance with these regulations. Additionally, if the square footage of an expansion or addition to existing development is equal to or greater than 30% of the square footage of the existing development, then the wall of the existing development where the improvement is attached as well as the expansion or addition shall be subject to compliance with these regulations.

(Ord. O-C-07-8, passed 10-22-2007)

**§ 153.035 PERMITTED USES.**

The permitted uses for each district are shown on Table A. The uses that are listed for the various districts shall be according to the common meaning of the term or according to definitions given in § 153.011. Uses not specifically listed or defined to be included in the categories under §§ 153.025 through 153.039 shall not be permitted.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-01-4, passed 7-2-2001; Ord. O-C-07-6, passed 10-9-2007)

**§ 153.036 SPECIAL EXCEPTIONS.**

The special exceptions for each district that may be permitted by the Board of Zoning Appeals are shown on Table A. The Board of Zoning Appeals shall follow the provisions of § 153.098 and the notice provisions of § 153.118 of this chapter when considering any application for a special exception.

<b>Table A - Zoning Districts; Permitted Uses; Special Exceptions</b>
<b>A-1 AGRICULTURE DISTRICT</b>
<b>Permitted Uses</b>
<b>Table A - Zoning Districts; Permitted Uses; Special Exceptions</b>
<b>A-1 AGRICULTURE DISTRICT</b>
<b>Permitted Uses</b>
Accessory uses
Agriculture
Basement homes
Churches
Essential services
Home occupations

Mobile homes
Noncommercial recreation use
Nursery and greenhouses
Public and parochial schools
Public parks and playgrounds
Single-family dwellings
<b>Special Exceptions</b>
Airports
Campgrounds
Cemeteries
Commercial recreation use
Fire stations
Golf courses
Hospital and clinics
Mineral excavation
Mobile home parks
Municipal buildings and libraries
Nursery school
Parking lots
Planned unit residential project
Private clubs
Public utility buildings
Rest homes
Swimming pools
Water and sewage treatment plants
<b>B-1 BUSINESS DISTRICT</b>
<b>Permitted Uses</b>
Accessory uses
Automobile sales, services and repair
Cleaners and laundries
Eating and drinking establishments
Essential services
Farm implement sales, service and repair
Fire stations and municipal buildings
Hotels and motels
Massage therapy service, subject to the criteria set forth in § 153.061
Media store
Media store with sexually oriented media, subject to the criteria set forth in § 153.062
Mobile homes sales
Nursery and greenhouses
Offices
Offices and banks
Parking lots
Personal and professional services
Public parks
Public utility buildings
Retail business
Supply yards
Theaters
<b>Special Exceptions</b>

Churches
Commercial recreation
Commercial schools
Dairies
Funeral homes
Hospitals and clinics
Light industrial, as defined in § 153.011
Planned unit business project
Printing shop
Schools, public and parochial
Warehouses
Wholesale businesses
<b>B-2 BUSINESS DISTRICT</b>
<b><i>Permitted Uses</i></b>
Accessory uses
Eating and drinking establishments
Essential services
Fire stations and municipal buildings
Home occupation
Media store
Media store with sexually oriented media, subject to the criteria set forth in § 153.062
Nursery and green houses
Offices
Offices and banks
Parking lots
Personal and professional services
Public parks
Public utility buildings
Retail business
<b><i>Special Exceptions</i></b>
Churches
Commercial recreation
Funeral homes
Hospitals and clinics
Multiple-family dwellings
Planned unit business project
Schools, public and parochial
Single-family dwellings
<b>C-1 CONSERVATION DISTRICT</b>
<b><i>Permitted Uses</i></b>
Accessory uses
Agriculture
Basement homes
Essential services
Mobile homes
Public parks and playgrounds
Recreational uses
Single-family dwellings
<b><i>Special Exceptions</i></b>

Campgrounds
Cemeteries
Churches
Golf courses
Home occupations
Mineral excavation
Private clubs
Riding stables
Swimming pools
Water and sewage treatment plants
<b>I-1 LIGHT INDUSTRIAL DISTRICT</b>
<b><i>Permitted Uses</i></b>
Accessory uses
Essential services
Fire stations and municipal buildings
Light industrial, as defined in § 153.011
Offices
Parking lots
Research and testing labs
Sex shop, subject to the separation requirements of § 153.063
Sexually oriented cabaret, subject to the separation requirements of §153.063 and to the criteria set forth in § 153.064
Sexually oriented media store, subject to the separation requirements of §153.063
Sexually oriented motion picture theater or establishment showing sexually oriented videos on premises, subject to the separation requirements of § 153.063 and to the criteria set forth in § 153.065
Warehouses
Water and sewage treatment plants
Wholesale businesses
<b><i>Special Exceptions</i></b>
Agriculture
Mineral extraction
Planned unit industrial projects
Recycling plant for wastes of a type described in §153.011
Restaurants
Supply yards
<b>I-2 HEAVY INDUSTRIAL DISTRICT</b>
<b><i>Permitted Uses</i></b>
Accessory uses
Essential services
Essential services and accessory uses
Fire stations and municipal buildings
Fire stations and municipal buildings
Heavy industrial, as defined in §153.011
Light industrial, as defined in §153.011
Offices
Parking lots
Planned unit industrial projects
Recycling plant
Research and testing labs
Salvage yard (other than motor vehicle)

Supply yards
Truck and railroad terminals
Warehouses
Water and sewage treatment plants
Water and sewage treatment plants
Wholesale businesses
<b><i>Special Exceptions</i></b>
Agricultural
Mineral extraction
Motor vehicle salvage yard
Municipal waste (solid) transfer station
<b><i>I-3 SPECIAL INDUSTRIAL DISTRICT</i></b>
<b><i>Permitted Uses</i></b>
Energy generation power plant
Essential services and accessory uses
Explosives blending facility
<b><i>Special Exceptions</i></b>
Chemical production facility
Hazardous waste and noxious waste facility
<b><i>R-1 RESIDENTIAL DISTRICT</i></b>
<b><i>Permitted Uses</i></b>
Accessory uses
Essential services buildings
Mobile homes
Public and parochial schools
Public parks and playgrounds
Single-family dwellings
<b><i>Special Exceptions</i></b>
Agriculture
Basement homes
Cemeteries
Churches
Fire stations
Home occupations
Mobile home parks
Municipal buildings and libraries
Nursery schools
Parking lots
Planned unit residential project
Public utility buildings
<b><i>R-2 RESIDENTIAL DISTRICT</i></b>
<b><i>Permitted Uses</i></b>
Accessory uses
Essential services
Mobile homes
Public and parochial schools
Public parks and playgrounds

Single-family dwellings
Two-family dwellings
<b>Special Exceptions</b>
Basement homes
Churches
Fire stations
Funeral homes
Home occupations
Mobile home parks
Multiple-family dwellings
Municipal buildings and libraries
Nursery schools
Parking lots
Planned unit residential project
Private clubs
Public utility buildings
Rest homes

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-01-4, passed 7-2-2001; Ord. O-C-07-6, passed 10-9-2007)

**§ 153.037 LOT AND YARD REQUIREMENTS.**

(A) The minimum lot area, minimum width of lot, minimum depth of front yard, minimum width of each side yard and minimum depth of rear yard for each district shall be as shown on the following table:

<b>Table B - Lot and Yard Requirements</b>						
<b>District</b>	<b>Min. Lot Area (Sq. Ft. or Acres)</b>	<b>Min. Lot Area/ Family (Sq. Ft. or Acres)</b>	<b>Min. Lot Width (Ft.)</b>	<b>Min. Depth Front Yard (Ft.)</b>	<b>Min. Width Side Yard (Ft.)*</b>	<b>Min. Depth Rear Yard (Ft.)</b>
<b>A-1 AGRICULTURE</b>						
<b>Table B - Lot and Yard Requirements</b>						
<b>District</b>	<b>Min. Lot Area (Sq. Ft. or Acres)</b>	<b>Min. Lot Area/ Family (Sq. Ft. or Acres)</b>	<b>Min. Lot Width (Ft.)</b>	<b>Min. Depth Front Yard (Ft.)</b>	<b>Min. Width Side Yard (Ft.)*</b>	<b>Min. Depth Rear Yard (Ft.)</b>
<b>A-1 AGRICULTURE</b>						
Single-family dwellings	1 acre	1 acre	150	35	10	30
Other uses	5 acres	-	500	50	30	30
<b>B-1 and B-2 BUSINESS</b>						
All uses	1 acre	-	150	35	10	30
<b>C-1 CONSERVATION</b>						
Single-family dwellings	1 acre	1 acre	150	35	10	30
Other uses	5 acres	-	500	50	30	30
<b>I-1, I-2, I-3 INDUSTRIAL</b>						
All uses	1 acre	150	35	10	30	15
<b>R-1 RESIDENTIAL</b>						

All uses not served by central sewerage systems	1 acre	1 acre	150	35	10	30
All uses served by central sewerage systems	7,500 sq. ft.	7,500 sq. ft.	75	35	10	30
<b>R-2 RESIDENTIAL</b>						
All uses (except multiple-family dwellings) not served by central sewerage systems	1 acre	1 acre	150	35	10	30
All uses (except multiple-family dwellings) served by central sewerage systems	7,000 sq. ft.	7,000 sq. ft.	60	20	10	30
Multiple-family dwellings (must be served by central sewerage systems)	7,000 plus 1,500 sq. ft.		90	20	15	30
Scenic		3 acres	500	100	30	100
* Principal structures						

(B) Lots which abut on more than one street shall provide the required front yards along every street.

(C) No portion of a principal structure, whether open or enclosed, including garages, porches, carports, balconies, roofs or platforms above normal grade level, shall project into any minimum front, side or rear yard. Accessory structures may be located within five feet of the side and rear property lines.

(D) Any lot of record existing at the effective date of this chapter may be used for the erection of a structure conforming to the use regulations of the district in which it is located, even though its area and width are less than the minimum requirements of this chapter; however, its width and area must conform to the requirements of the zoning ordinance replaced by Ordinance O-C-97-10.

(E) In any residential district (R-1 or R-2) where at least 25% of the lots in a block are occupied by existing residential structures, the minimum depth of the front yards of the existing residential structures shall be the minimum depth required by this chapter.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.038 HEIGHT REGULATIONS.**

No principal structure shall exceed 35 feet in height above average ground level and no accessory building shall exceed 16 feet in height above average ground level unless approved by the Board of Zoning Appeals. The Board may authorize a variance to this height regulation in any district if:

(A) All front and side yard depths are increased one foot for each additional foot of height; or

(B) The structure is any of the following and does not constitute a hazard to an established airport: television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers, ornamental towers and spires, chimneys, silos, elevator bulkheads, smoke stacks, conveyors and flagpoles.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.039 SCENIC CORRIDOR OVERLAY DISTRICT REGULATIONS.**

(A) *Development within the Scenic Corridor Overlay District.*

(1) Any new development, occupation or use of any land within the Scenic Corridor Overlay District shall not be approved until the applicant has submitted to the Zoning Administrator an existing conditions map and a site plan for the proposed development. The existing conditions map shall show the existing conditions of the land, including, but not limited to, contours, existing landscaping and vegetation, water bodies and other existing conditions on the land. The site plan shall include, identify and locate, on a scale of not less than one inch to 100 feet, the following:

(a) The total area in the development;

(b) The existing zoning of the property in question and/or all adjacent properties;

(c) All public and private right-of-way and easement lines located on or adjacent to the property which are proposed to be continued, created, relocated or abandoned;

(d) Existing topography with a maximum of ten-foot contour intervals with slopes in excess of 18% identified;

(e) The proposed finished grade of the development shown by contours not larger than five feet;



(f) The location of all existing and proposed buildings in the described parcels, the uses to be contained therein and the total number of buildings including dimensions, heights, gross floor area and number of stories, as well as the type of construction materials to be utilized on the exterior, including roof, of the buildings;

(g) The location and dimensions of all curb cuts, driving lanes, off-street parking and loading areas including the number of spaces, angles of stalls, grades, surfacing materials, drainage plans and illumination of facilities;

(h) All sidewalks and other open areas;

(i) Location of all walls, fences and buffer yards;

(j) Location, size, height and orientation of all signs (all signs must comply with §153.057);

(k) Location of all existing and proposed utilities including electric, gas, telephone, cable and storm drains;

(l) Existing and proposed water and sanitary sewer lines including pipe sizes, types and grades and also any septic system locations;

(m) Scheduling and phasing of the project;

(n) The landscape plan; and

(o) Any other information as required by the Plan Commission to determine conformance with this division.

(2) The Zoning Administrator may, in the sole discretion of the Zoning Administrator, refer all site plans to a Technical Advisory Committee for review and consideration. The Technical Advisory Committee shall be composed of all or a part of the Board of Directors of the County Development Corporation as determined by the County Development Corporation. The Technical Advisory Committee shall review the site plan for compliance with this division and the zoning regulations and shall make a recommendation regarding approval of the site plan to the Plan Commission.

(B) *Rules and regulations.* The land within the Scenic Corridor Overlay District shall be subject to the rules and regulations of the zoning regulations pertaining to the district within which it is located as shown on the zoning map. Additionally, all land within the Scenic Corridor Overlay District shall be subject to the following regulations and restrictions.

(1) Buildings or structures constructed within this District shall be constructed of material preferably consisting of brick, wood, cast in place concrete, pre-cast concrete, metal, glass or ceramic tile. The exterior building elevations visible from a public access roadway or road frontage must be constructed with at least one-half of the elevation to be windows, masonry (excluding concrete block), split-face concrete block, log or wood siding, clapboard appearance siding or wainscot effect.

(2) Any accessory buildings and enclosures, whether attached to or detached from the main building, shall be of similar compatible design and materials as the main building. No more than 30% of the lot area shall be utilized for business usage buildings. No more than 50% of the lot area shall be utilized for industrial usage buildings.

(3) All development subject to this section shall provide a minimum of one tree for each 35 linear feet of road frontage along the Scenic Corridor. Additionally, an area no less than ten feet wide located along and running the length of any property line contiguous and adjacent to a public access roadway or road frontage must be landscaped. Other areas which have been disturbed by land development activities and are not paved or under structures must be seeded with turf mix minimizing weed growth, wind and water erosion. Large, uninterrupted areas of bare soil are prohibited. These areas must be landscaped in accordance with an approved landscape plan. Native plant materials are particularly encouraged although the use of ornamental plant materials is allowed. All grass, plantings and other landscaping shall be in growing condition and maintained at all times.

(4) There shall be no overnight outside storage on the lots unless the storage is screened from adjacent properties, parking areas, public streets and pedestrian ways. Likewise, all trash, garbage or refuse storage and disposal facilities shall be made of approved containers screened from view on all sides.

(5) There shall be no utility meters or lines located on or connected to any building elevation which is visible from public rights-of-way or thoroughfares.

(6) Walls within or along the roadway shall not be allowed except for low lying decorative stone walls for enhancement of the Scenic Corridor or walls that are needed for slope stabilization or animal control. No chain link fences shall be allowed within the district.

(7) All driveways, entryways and surface parking areas shall be paved in asphalt or concrete in business usage areas. All driveways and entryways shall be paved in asphalt or concrete in industrial usage areas.

(8) Use of stone riprap on banks or slopes shall not be permitted. The maximum finished slope of any disturbed area shall not be in excess of a ratio of

three to one.

(9) All outdoor lighting fixtures, including without limitation, ground, pole and building-mounted fixtures and canopy lighting shall be of a design and type containing shields, reflectors, fracture panels or recessed light sources so that the cutoff angle is 90 degrees or less. For purposes herein, the cutoff angle is that angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above which no light is permitted.

(10) The sale of vehicles, boats, recreational vehicles, all terrain vehicles, trucks or other motorized equipment within the district is prohibited.

(Ord. O-C-07-8, passed 10-22-2007)

## GENERAL REGULATIONS

### § 153.050 NONCONFORMING USES.

(A) A nonconforming use may be continued but may not be extended, expanded or changed unless to a conforming use, except as permitted by the Board of Zoning Appeals in accordance with the provisions of this chapter.

(B) Any nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before if the reconstruction is performed within 12 months of the casualty, and if the restored structure has no greater coverage and contains no greater cubic content than before the casualty.

(C) In the event that any nonconforming use, conducted in a structure or otherwise, ceases, for whatever reason, for a period of one year, or is abandoned for any period, the nonconforming use shall not be resumed.

(D) No nonconforming billboard or sign shall be modified to change the technology by adding tri-vision or changeable copy technology to a sign or board that, on October 9, 2007, had a flat face, changed by replacement of panels, posters or coverings on the sign.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-07-7, passed 10-9-2007)

### § 153.051 ACCESSORY USES.

(A) Accessory uses and structures such as private garages, tool sheds, barns and landscaping are permitted in all districts in conjunction with a primary use or structure provided the accessory use does not change the character of the district in which it is located.

(B) A private swimming pool may be permitted as an accessory use if it is surrounded by a wall or fence at least five feet high so as to prevent uncontrolled access by children.

(C) A mobile home may be permitted as an accessory use in the A-1 District if it is in conjunction with an existing permanent dwelling unit situated on at least one acre of land and if the mobile home is occupied by a relative or employee of the family resident in the permanent dwelling unit.

(Ord. O-C-97-10, passed 12-22-1997)

### § 153.052 TEMPORARY USES.

Temporary uses and structures used in conjunction with construction work, seasonal sales or emergencies may be permitted by the Board of Zoning Appeals if the proposed site is acceptable and neighboring uses are not adversely affected. They shall be removed promptly when their function has been fulfilled. Permits for temporary structures may be issued for a period not to exceed six months.

(Ord. O-C-97-10, passed 12-22-1997)

### § 153.053 PLANNED UNIT RESIDENTIAL BUSINESS AND INDUSTRIAL PROJECTS.

(A) The district regulations of this chapter may be modified by the Board of Zoning Appeals in the case of a plan utilizing an unusual concept of development which meets the requirements of this section. The planned unit projects provision is intended to encourage original and imaginative development and subdivision design which preserves the natural amenities of the site and provides for the general welfare of the county. After the unit plan is approved, all development, construction and use shall be in accordance with that plan unless a new planned unit project plan is submitted to and approved by the Board of Zoning Appeals as required by this chapter. Any development contrary to the approved unit plan shall constitute a violation of this chapter.

(B) The area of land to be developed shall not be less than five acres.

(C) Properties adjacent to the unit plan shall not be adversely affected.

(D) In planned unit residential projects, the minimum lot and yard requirements may be reduced, however, the average density of dwelling units in the total plan shall not be higher than that permitted in the district in which the plan is located.

(E) In the planned unit business and industrial projects, the minimum lot and yard requirements may be reduced, however, the total land area of the unit plan shall equal the accumulative lot area requirements of each use or structure contained within the unit plan.

(F) The unit plan shall permanently reserve land suitable for the common use of the public or the owners in a particular development. This may be accomplished by dedication, covenant or easement. This land may be for future public facilities, for recreational or scenic open space, or for a landscaped buffer zone as approved by the Plan Commission. Provisions for permanent control and maintenance of this land shall be outlined in a form acceptable to the Plan Commission, Board and Plan Commission Attorney.

(G) The use of the land shall not differ substantially from the uses permitted in the district in which the plan is located, except that limited business facilities, intended to serve only the planned unit residential project area and fully integrated into the design of the project, may be considered and multiple-family dwellings may be considered in single-family residential districts if they are so designed and sited that they do not detract from the character of the neighborhood in which they occur.

(H) The unit plan shall be consistent with the purpose of this chapter.

(I) The unit plan shall be reviewed, and recommendations made, by the Plan Commission, to determine if the proposed project is consistent with the County Comprehensive Plan and in the best interests of the county.

(J) The unit plan shall make adequate provisions for roadways, public utilities, drainage and any other matters which, in the opinion of the Board of Zoning Appeals, are necessary to ensure compliance with this chapter and an orderly development of the site.

(Ord. O-C-97-10, passed 12-22-1997) Penalty, see § 153.999

**§ 153.054 OFF-STREET PARKING.**

(A) Off-street parking spaces shall be provided in accordance with the specifications in this section in all districts.

(B) Parking spaces may be located on a lot other than that containing the principal use with the approval of the Board of Zoning Appeals.

(C) Any off-street parking lot for more than five vehicles shall be graded for proper drainage and surfaced so as to provide a durable and dustless surface.

(D) Any lighting used to illuminate any off-street parking lot shall be so arranged so as to reflect the light away from adjoining premises in any R District.

<i>Table C - Off-Street Parking</i>	
<i>Use</i>	<i>Parking Spaces Required</i>
<i>Table C - Off-Street Parking</i>	
<i>Use</i>	<i>Parking Spaces Required</i>
Bowling alleys	5 for each alley
Church and school	1 per 6 seats in principal assembly room
Hospitals and rest homes	1 per 3 beds and 1 for each 2 employees on the maximum working shift
Hotels and motels	1 for each living or sleeping unit
Industrial	1 for each 2 employees on the maximum working shift
Private club or lodge	1 per 4 seats
Professional offices; wholesale houses; and medical clinics	1 for every 250 sq. ft. of floor space
Recreational or assembly places; e.g., dance halls; night clubs; funeral homes	1 for every 100 sq. ft. of floor space
Residential	2 per dwelling unit
Retail businesses; eating and drinking places; and personal service establishments	1 for every 100 sq. ft. of floor space

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.055 OFF-STREET LOADING.**

Every building which requires the receipt or distribution by vehicles of material or merchandise shall provide off-street loading berths of a size and arrangement appropriate for the types of vehicles utilizing this space. In no case will loading or unloading be permitted within public rights-of-way.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.056 MOBILE HOMES.**

(A) Mobile homes, whether the wheels are attached or not, shall be permitted on single lots or in mobile home parks. When located on single lots, the district, area, yard and other requirements shall be the same as for conventional single-family dwellings. When located in mobile home parks, the parks shall be designed to meet the requirements set forth in the

Mobile Home Parks Act of 1955, as amended; the State Board of Health Regulations, as amended; and the requirements of this section.

- (B) The minimum area of a mobile home park shall be five acres.
- (C) Each mobile home site within the mobile home park shall have a minimum area of 3,600 square feet.
- (D) Each mobile home site shall have a minimum width of 40 feet.
- (E) Not less than 10% of the gross area of the mobile home park shall be improved for recreational activities for the residents of the park.
- (F) The mobile home park shall be appropriately landscaped and screened from adjacent properties.
- (G) The mobile home park shall meet all applicable requirements of §153.053.
- (H) Coin-operated laundries, laundry and dry-cleaning pick-up stations and other commercial convenience establishments may be permitted in mobile home parks provided:
  - (1) They are subordinate to the residential character of the park;
  - (2) They are located, designed and intended to serve only the needs of persons living in the park;
  - (3) The establishments and the parking areas related to their use shall not occupy more than 10% of the total area of the park; and
  - (4) The establishments shall present no visible evidence of their commercial nature to areas outside the park.
- (I) Each mobile home site shall be provided with a stand consisting of either solid concrete slab or two concrete ribbons of a thickness and size adequate to support the maximum anticipated loads during all seasons. When concrete ribbons are used, the area between the ribbons shall be filled with a layer of crushed rock.

(Ord. O-C-97-10, passed 12-22-1997)

#### **§ 153.057 SIGNS.**

No sign, billboard or exterior graphic display shall be permitted in any zoning district except in accordance with the provisions of this section.

(A) *Purposes.* The purpose of this section is to achieve balance among the following differing, and at times, competing goals:

- (1) To encourage the effective use of signs as a means of communication for businesses, organizations and individuals in the county;
- (2) To provide a means of way-finding in the county, thus reducing traffic congestion;
- (3) To provide for adequate business identification, advertising and communication;
- (4) To prohibit signs of an excessive size and number that they obscure one another to the detriment of the economic and social well-being of the county;
- (5) To protect the safety and welfare of the public by minimizing hazards to pedestrian and vehicular traffic;
- (6) To preserve property values by preventing unsightly and chaotic development which has a blighting influence on the county;
- (7) To differentiate among those signs that, because of their location, may distract drivers on public streets and those that may provide information to them while they remain in their cars but out of active traffic;
- (8) To minimize the possible adverse effects of signs on nearby public and private property; and
- (9) To implement the goals and objectives of the gateways and appearance study, conducted in 2007 with assistance from Ball State University's College of Architecture and Planning.

(B) *Applicability.* This section shall apply to all signs that are legible from any public right-of-way or from any lot other than the lot or premises on which the sign is located.

(C) *General rules.* The following rules, standards and principles shall apply to all signs located in the county.

- (1) Any permitted sign shall be subject to the size and height limitations imposed by this section for the use district in which the sign is located, except as otherwise provided in this section.
- (2) No sign or sign structure shall be placed upon any street or highway right-of-way except as otherwise provided in this section.
- (3) No portion of a sign shall obscure visibility between a height of three feet and ten feet within an area defined by a triangle extending from a street intersection by a distance of 25 feet from the corner along the curb line of each street, with the third side of the triangle formed by connecting the other two legs of the triangle.

(4) No sign shall be erected or maintained at any location where by reason of its position, working, illumination, shape, symbol, color, form or character it may obstruct, impair, obscure, interfere with the view of, or may be confused with any authorized traffic sign, signal or device or interfere with, confuse or disrupt traffic safety or flow.

(5) No sign shall be erected, relocated or maintained so as to prevent free ingress or egress from any door, window or fire escape.

(D) *Signs allowed without a sign permit.* The following signs shall be exempt from the sign permit requirements of this section but shall be subject to all other standards of this section:

(1) Signs installed by employees or officials of the county that do not fall under one of the broader exemptions of this section;

(2) Detached signs smaller than two square feet in area and less than four feet in height, and containing no commercial message;

(3) Wall signs smaller than two square feet in area and containing no commercial message;

(4) Window signs permitted by this section, where the signs are not illuminated or otherwise electrified;

(5) Permanent signs smaller than seven square feet and permitted in residential or agricultural districts;

(6) Any sign not legible from a public right-of-way or property other than the lot or premises on which the sign is located;

(7) Routine maintenance of any sign, not involving structural changes to the sign;

(8) Changes of message, either manually or electronically, on an electronic message sign or changeable copy sign, subject to limitations of this section on the frequency of message changes; and

(9) Changes of sign panels or letters that do not involve structural changes to the sign.

(E) *Signs that are partially exempt from this section.* The following signs may be erected or constructed without a sign permit, but may be subject to additional regulations under this section. Where a sign is erected pursuant to a state statute or a court order, the sign may exceed the size standards of this section or otherwise deviate from the standards set forth in this section to the extent that the statute or court order expressly required the larger size or other deviation. In all other respects, these signs shall conform to the standards of this section:

(1) Signs conforming to the *Manual of Uniform Traffic Control Devices* and bearing no commercial message;

(2) Signs installed by employees or officials of a state or federal agency in the course of their governmental duties and bearing no commercial message;

(3) Signs required by a state or federal statute;

(4) Signs required by an order of a court of competent jurisdiction;

(5) Signs installed by public utilities in their rights-of-way or on their facilities and bearing no commercial message other than that message as necessary to identify the use; and

(6) Signs installed by a transit company with a franchise or other right to operate in the county, where those signs are installed along its routes and relate to schedules or other information about the transit route.

(F) *Prohibited signs.* The following signs are prohibited in all districts:

(1) Any sign erected or painted upon a fence, tree, standpipe, rock or other natural feature;

(2) Any sign attached to or painted on a fire escape or utility pole, except the manufacturer's or installer's ID plate which shall not be legible from a distance of more than three feet;

(3) Any sign which uses a word such as "Stop" or "Danger" prominently displayed and/or which is a copy or imitation of official traffic control signs except where those words are a part of an attraction title for a theater or other similar event or purpose;

(4) Signs which contain flashing or intermittent illuminations, except as required for traffic control. Changing the copy on a bulletin board, changeable copy or electronic message type sign in conformance with the provisions of division (I)(6) below shall not be considered a violation of this section;

(5) Portable signs; and

(6) Signs that produce sound or noise; cause interference with radio, telephone, television or other communication transmissions; produce or reflect motion pictures; emit visible smoke, vapor, particles or odor; are animated or produce any rotation, motion or movement. A sign on which the message is changed electronically not more than one time per minute shall not be considered to be an animated sign or a sign with movement.

(G) *Signs in Residential and Conservation Districts.*

(1) Each occupied lot in a Residential or Conservation District shall be allowed a total of four detached signs at any

time, including not more than one permanent detached sign, and not more than three temporary detached signs. Each sign shall not exceed six square feet in area and six feet in height. These signs may not be illuminated. The permanent detached sign shall not contain a commercial message, and no more than two temporary signs on a lot in a residential district at any one time may contain a commercial message. The only commercial messages permitted on those signs are messages related to commercial activity lawfully conducted on the premises, including the lawful, occasional sale of personal property (such as through a garage sale or yard sale) or the sale, rental or lease of the premises.

(2) Signs related to the sale of personal property shall be removed within 24 hours after the end of the sale. Signs related to the sale, lease or rental of the premises shall be removed no later than the date on which the deed, lease or other document representing the transaction is completed. Any such sign may contain any message other than a commercial message. If a message relates to an election or special event, the sign shall be removed within seven days following the conclusion of the election or other event.

(3) Additional detached signs, permanent or temporary, of not more than two square feet in area and four feet in height are permitted, provided that the signs contain no commercial message and are not illuminated.

(H) *Signs on institutional uses.* Any school, house of worship or other institutional use permitted in a Business or Industrial District shall be allowed to have the signage allowed for a business or industry in that district or the signage allowed by this section. Any institutional use permitted in a Residential or Agricultural Zoning District shall be allowed to have the signage allowed by this section. The signage allowed for institutional uses is:

(1) One detached sign, not to exceed 24- square feet in area. This may include changeable copy signs, not to exceed 30% of the sign area. These signs may be illuminated and may not be located closer than ten feet from the pavement edge or edge of a street.

(2) Each use shall also be allowed one wall sign for each public entrance to the institutional use. These wall signs shall not exceed four-square feet in area each and shall not be illuminated.

(I) *Signs in Business Districts.* Business signs shall be permitted as an accessory use to any lawful business, industry or other use located on the same premises, subject to the following standards.

(1) Signs may contain any message that is not a commercial message.

(2) Except for signs expressly allowed under division (I)(9) below, signs shall not contain any commercial message related to any product or service not offered or produced on the premises.

(3) Signs shall not have an aggregate surface area greater than five-square feet for each foot of building frontage of the principal structure on the premises.

(4) Signs shall not project over public rights-of-way.

(5) Signs may be illuminated internally or with direct, white light, cast downward on the sign.

(6) No detached sign shall exceed 16 feet in height) except as follows:

(a) Signs permitted under division (I)(9) below shall be subject to the height standards set forth there; and

(b) Any other detached sign otherwise conforming with this section and located on the premises of a business where at least one of the driveways or other roadway entrances to the establishment is within 750 feet of an entrance or exit ramp to an interstate highway (measured along the edge of the highway right-of-way, without regard to the width of the road), may be erected to a height that is not greater than the lower of:

1. Fifteen feet above the elevation of the centerline of the nearest lane pair on the interstate; or
2. Fifty feet in height from the ground.

(7) There shall be no more than one detached sign per premises, except that those signs allowed under this section without a permit shall not be counted in determining the number of detached signs. For purposes of this division, a **PREMISES** shall be considered the entire lot or parcel under one schedule of the County Tax Assessor as of September 1, 2007, or any lot created after that date through a lawful subdivision or a lawful exemption from the subdivision regulations of the county.

(8) Up to 25% of the copy area of any permitted sign larger than 50-square feet may consist of changeable copy area. Copy in this area may be changed manually or electronically, provided that any electronically changeable copy sign shall be programmed so that it does not change more than one time every minute and so that each change of message or image is a complete change with no rolling, scrolling or other moving effects.

(9) Billboards shall be allowed, subject to the following standards and conditions:

(a) Billboards shall be allowed only on sites in the B-1, I-1, I-2 or I-3 Zoning Districts;

(b) A billboard may be erected only on land located within 660 feet of the right-of-way of an interstate highway;

(c) No billboard shall be erected within 1,500 feet of any existing billboard or of the site of a billboard for which a permit has been issued; to ensure compliance with this section, any billboard application shall be accompanied by a drawing showing the precise locations of and distances to each billboard located within 2,500 feet of the proposed site, which

drawing shall be signed and stamped by a licensed surveyor or professional engineer; the separation distance between billboards shall be measured in a straight line along the right-of-way line of the interstate highway, without regard to the distance of the billboard from the highway or to the width of the road;

(d) A site that is eligible for a billboard under this section shall be subject to the numerical limit on detached signs set forth in division (I)(7) above; fully aware of the redundancy, it is the intent of the Board of County Commissioners that only a sign allowed under division (I)(6) above or one allowed under this division (I)(9), but not both, shall be allowed on any one premises at any one time;

(e) A billboard shall not exceed 300 square feet in size;

(f) The height of a billboard shall not exceed the lower of:

1. Fifteen feet above the elevation of the centerline of the nearest lane pair on the interstate highway; or
2. Fifty feet from the ground;

(J) *Signs in Agricultural District.* In the A-1 District, signs shall be permitted if they meet the following requirements.

(1) Each operating farm or forest may have a total of five detached signs at any time, of which two may be permanent signs and the rest temporary. One sign shall not exceed 75-square feet in area, nor 16 feet in height from the ground. The additional (up to four) detached signs shall not exceed six-square feet in area and six feet in height. Only one sign may be illuminated. No more than three signs on a farm or forest in an Agricultural District at any one time may contain a commercial message. The only commercial messages permitted on these signs are messages related to commercial activity lawfully conducted on the premises, including the sale of farm products, the lawful, occasional sale of personal property (such as through a garage sale or yard sale) or the sale, rental or lease of the premises.

(2) No sign shall be located closer than 100 feet to a road intersection except for directional signs which are less than six-square feet in area.

(3) No sign shall be located in a location which would interfere with highway horizontal sight distances.

(4) No sign larger than seven-square feet shall be located closer than 500 feet to any property zoned and used for a residential purpose, school, house of worship or playground.

(5) Signs in this District may bear any message that is not a commercial message, or a commercial message related to any activity lawfully conducted on the property, including, but not limited to, the sale of agricultural products, the lease or rental of the property, or the occasional sale of personal property.

(K) *Owner's consent required.* No sign shall be placed on private or public property without written consent of the owner or of agent for the property.

(L) *Substitution of messages.* Any sign allowed under this section or a predecessor ordinance, by sign permit, by conditional use permit or by variance, may contain, in lieu of any other message or copy, any lawful noncommercial message that does not direct attention to a business operated for profit, or to a product, commodity or service for sale or lease, or to any other commercial interest or activity, so long as the sign complies with the size, height, area and other requirements of this section.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-07-7, passed 10-9-2007)

#### **§ 153.058 HOME OCCUPATIONS.**

(A) A home occupation may be permitted as a special exception if it complies with the requirements of this section.

(B) The home occupation shall be carried on by a member of the family residing in the dwelling unit with not more than one employee who is not part of the family.

(C) The home occupation shall be carried on wholly within the principal or accessory structures.

(D) Exterior displays or signs other than those permitted under §153.057, exterior storage or materials, and exterior indication of the home occupation or variation from the residential character of the principal structure shall not be permitted.

(E) Objectionable noise, vibration, smoke, dust, electrical disturbance, odors, heat or glare shall not be produced.

(F) The home occupation shall not create any traffic or parking problems.

(Ord. O-C-97-10, passed 12-22-1997)

#### **§ 153.059 LANDSCAPING.**

Landscaping is to be completed on the entire premises and shall provide as a minimum requirement for safe surface water disposal, ground cover of grass, plants or artificial materials on the portion of the premises not occupied by any building, driveway or parking area, or any portion of the premises not left in its natural wooded state and not disturbed during construction, and shall be left free of junk, debris, dangerous, objectionable or noxious matter. The minimum requirements for landscaping, either grass or ground cover, shall be completed and growing within one year after completion of the improvements.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.060 CAMPGROUND.**

A campground may be permitted as a special exception in any Conservation or Agricultural District, if it meets the requirements of this section. The Board of Zoning Appeals shall establish minimum area, maximum number of camp sites per acre, buffer zones between camping areas and property lines, sewage and trash disposal requirements, provisions for roadways and other criteria as the Board of Zoning Appeals believes is necessary or desirable. All campgrounds must receive approval from the State Department of Natural Resources and the State Board of Health, prior to being allowed as a special exception.

(Ord. O-C-97-10, passed 12-22-1997)

**§ 153.061 MASSAGE THERAPY.**

A massage therapy studio or other establishment operated or staffed by one or more massage therapist(s) certified by either the American Massage Therapy Association or the Bodywork and Massage Associated Professionals. The county shall not issue a permit, license certificate or other authorization for the establishment of a massage parlor or similar establishment unless the applicant for the permit or license has been certified by one of the national organizations named above or the applicant provides the name(s) and/or licensing information of one or more persons who are so licensed and who will provide massage therapy at the establishment. Any massage parlor shall maintain posted on its premises copies of the certifications of the massage therapists who provide services at the establishment. There shall be a rebuttable presumption that any massage parlor or similar establishment operated by a person who is not a certified massage therapist and that does not have posted on its premises one or more certifications of massage therapists who provide services there is operating in violation of this section and subject to enforcement action and penalty under this chapter.

(Ord. O-C-07-6, passed 10-9-2007) Penalty, see §153.999

**§ 153.062 MEDIA STORE WITH SEXUALLY ORIENTED MEDIA.**

(A) A retail establishment which devotes more than 5% of its gross public floor area or 5% of the number of items in inventory to sexually-explicit material, but which devotes less than 30% of its gross public floor area and less than 30% of the number of items in inventory to sexually-explicit material shall be treated for zoning purposes as a book or media shop and not as a sexually oriented media shop, provided that it meets the following conditions:

- (1) All sexually-explicit media shall be maintained in a room that is separated from other material by an opaque wall that extends to the ceiling or eight feet above the floor, whichever is less;
- (2) Access to the room containing the sexually-explicit media shall be through an opaque, solid door;
- (3) The room containing sexually-explicit media shall be posted with a notice indicating that only persons 18 years of age or older are allowed in the room; and
- (4) Access to the room shall be physically limited to adults through control of access by an employee of the store, through use of an access release located at least 66 inches off the floor, or through constant monitoring of the room by an employee on duty through electronic means or through a window or mirror providing visibility into the room from the manager's or cashier's work station.

(B) A business conforming with this standard shall not be considered a sexually oriented business.

(Ord. O-C-07-6, passed 10-9-2007)

**§ 153.063 SEXUALLY ORIENTED BUSINESSES; ADDITIONAL LOCATION REQUIREMENTS.**

(A) *Purpose and intent.* The purpose of this section is three-fold:

- (1) To ensure that sexually oriented businesses are located so that they are separated from residential neighborhoods, where children and others are likely to be walking and should not be forced to encounter such a business in their daily activities;
- (2) To ensure that sexually oriented businesses are sufficiently separated from libraries, parks, schools and houses of worship that persons visiting those places and institutions will not be forced to encounter such a business in close proximity to these places and institutions; and
- (3) To ensure that sexually oriented businesses are sufficiently separated from one another that the county does not inadvertently create a "combat zone" or other area that is perceived to be dominated by those businesses or that causes the concentration of the secondary effects of those businesses in one area.

(B) *Separation requirements.*

(1) Sexually oriented businesses, as defined in §153.011 shall be allowed only in the zoning districts in which a specific sexually oriented business is listed as a permitted use under Table A in § 153.036.

(2) A sexually oriented business shall be located with a minimum separation distance between itself and other specific uses as set forth in the table below.



<b>Table D - Sexually Oriented Businesses; Minimum Separation Distance</b>	
<b>Other Use</b>	<b>Minimum Separation Distance (Ft.)</b>
<b>Table D - Sexually Oriented Businesses; Minimum Separation Distance</b>	
<b>Other Use</b>	<b>Minimum Separation Distance (Ft.)</b>
House of worship	500
Other sexually oriented business	1,000
Public library	750
Public park, boys and girls club, YMCA or YWCA	750
Residentially zoned land	500
School	750

(C) *Measurement.* Measurements for purposes of this section shall be made from the nearest property line of the use which is not a sexually oriented business to the nearest property line of the sexually oriented business. If the sexually oriented business is located in a multi-tenant building, then the distance shall be measured from the nearest property line of the use which is not a sexually oriented business to the nearest line of the leasehold or other space actually controlled or occupied by the sexually oriented business.

(D) *Limitations.*

(1) *School.* The separation requirement from a school will apply only if one or more of the following applies:

- (a) The school is a public school;
- (b) The school has been in operation at the same location for one year or more; or
- (3) The lot or parcel at which the school is now operating is owned by the organization operating the school.

(2) *House of worship.* The separation requirement from a house of worship will apply only if one or more of the following applies:

- (a) The house of worship has been in operation at the same location for one year or more; or
- (b) The lot or parcel at which the house of worship is now operating is owned by the organization operating the house of worship.

(3) *Residentially zoned land.* For purposes of this section only, **RESIDENTIALLY ZONED LAND** shall mean land carrying a county zoning district designation beginning with an R.

(Ord. O-C-07-6, passed 10-9-2007)

**§ 153.064 SEXUALLY ORIENTED CABARETS; DESIGN STANDARDS.**

Any building used for the operation of a sexually oriented cabaret in the county shall meet the following design standards at all times that the cabaret is operated in the building.

(A) *Stage required.* The building shall include one or more stages, on which all performances shall take place. Each stage shall be in a room open to all customers of the establishment and containing at least 600 square feet of gross public floor area. The stage shall be raised at least 30 inches above the level of the floor on which customers stand or are seated.

(B) *Performance area.*

(1) All performances and all interactions between performers and customers shall occur in a room open to all customers of the establishment and containing at least 600 square feet of gross public floor area.

(2) No curtains, screens, shades or other devices shall be used to obscure any part of the room.

(C) *Lighting.* The lighting level in the area occupied by customers shall be at least five footcandles at a height of three feet off the floor.

(Ord. O-C-07-6, passed 10-9-2007)

**§ 153.065 SEXUALLY ORIENTED MOTION PICTURE THEATERS AND SHOWING OF VIDEOS.**

Any building used for the operation of a sexually oriented motion picture theater or to show sexually oriented videos on the premises for a fee in the county shall meet the following design standards at all times that the theater is operated in that building.

(A) *Presentation area.* All screenings and presentations of motion pictures, videos or other media shall occur in a room open to all customers of the establishment and containing at least 600-square feet of gross public floor area. No curtains, screens, shades or other devices shall be used to obscure any part of the room.

(B) *Lighting.* The lighting level in the area occupied by customers shall be at least two footcandles at floor level.

(C) *Seating.* Seating shall consist of individual, theater-style chairs, with solid arms separating the chairs. No couches, benches, individual chairs, beds, loose cushions or mattresses or other forms of seating may be provided. Separate spaces for wheelchairs shall be provided in accordance with the applicable provisions of the Southern Building Code and the Americans with Disabilities Act being 42 U.S.C. §§ 12101 et seq.

(Ord. O-C-07-6, passed 10-9-2007)

## **ADMINISTRATION AND ENFORCEMENT**

### **§ 153.080 ZONING ADMINISTRATION.**

The Zoning Administrator, who shall be appointed by the Plan Commission, shall:

(A) Administer and enforce the provisions of this chapter;

(B) Issue improvement location permits; and

(C) Maintain a permanent file of all improvement location permits and applications as public records.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.081 IMPROVEMENT LOCATION PERMITS.**

(A) *Requirement.* An improvement location permit shall be obtained before any person may:

(1) Occupy or use any vacant land;

(2) Occupy or use any structure hereafter constructed, reconstructed, moved or enlarged;

(3) Change the use of a structure or land to a different use; or

(4) Change a nonconforming use.

(B) *Application for an improvement location permit.* An application for an improvement location permit shall be accompanied by a plot plan showing clearly and completely the locations, dimensions and nature of any structure involved and any other information as the Zoning Administrator may require for administration of this chapter.

(C) *Scenic Corridor Overlay District; improvement location permit.* All applications for an improvement location permit relating to or concerning land within the Scenic Corridor Overlay District shall be considered for approval by the Plan Commission. Additionally, the Plan Commission must consider for approval the site plan for any improvement location permit to be issued within the Scenic Corridor Overlay District, after review of the site plan and consideration of any recommendation by the Technical Advisory Committee.

(D) No public utility shall connect utility services to an improvement requiring an improvement location permit, unless the landowner has obtained an improvement location permit.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-07-8, passed 10-22-2007; Ord. O-C-20-1, passed - -2020)

### **§ 153.082 METHOD OF APPEAL.**

Any person aggrieved or affected by a provision of this chapter or by any decision of the Zoning Administrator may appeal to the Board of Zoning Appeals within a reasonable time, as provided by the rules of the Board, by filing a notice of appeal specifying the grounds thereof. Every decision of the Board of Zoning Appeals shall be subject to review by the County Circuit or Superior Court.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.083 FEES.**

The following fees shall be charged and collected by the Zoning Administrator:

<b>Table E - Fees</b>	
<b>Action</b>	<b>Fee</b>
Application for improvement location permit for any improvement having a value of \$500 or more	\$50
Application to Board of Zoning Appeals for variance or special exception	\$200

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-06-9, passed 10-2-2006)

## BOARD OF ZONING APPEALS

### § 153.095 GENERAL.

In accordance with state law, the Board of County Commissioners shall appoint and organize a Board of Zoning Appeals, which Board may adopt rules to govern its procedure. The Board of Zoning Appeals shall hold meetings, keep minutes and, pursuant to notice, shall conduct hearings, compel the attendance of witnesses, take testimony and render decisions in writing, all required by law. Any person filing an appeal or proceeding with the Board shall assume any cost of public notice that is required.

(Ord. O-C-97-10, passed 12-22-1997)

### § 153.096 APPEALS.

The Board shall have the power to hear and decide appeals from any order, requirement, decision, grant or refusal made by the Zoning Administrator in the administration of this chapter.

(Ord. O-C-97-10, passed 12-22-1997)

### § 153.097 VARIANCES.

The Board of Zoning Appeals, upon appeal, shall have the power to authorize variances from the requirements of this chapter, and to attach conditions to the variances as it deems necessary to assure compliance with the purpose of this chapter. A variance may be permitted if all the following requirements are met:

- (A) Literal enforcement of the chapter would result in an unnecessary hardship with respect to the property;
- (B) Unnecessary hardship results because of unique characteristics of the property; and
- (C) The variance observes the spirit of this chapter, produces substantial justice and is not contrary to the public interest.

(Ord. O-C-97-10, passed 12-22-1997)

### § 153.098 SPECIAL EXCEPTIONS.

The Board of Zoning Appeals shall have the power to authorize special exceptions if the following requirements are met.

- (A) The special exception shall be listed as such in Table A (§153.036) for the district requested.
- (B) The special exception shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with the performance standards of § 153.099.
- (C) The special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.
- (D) The special exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.
- (E) The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.
- (F) The special exception shall preserve the purpose of this chapter.

(Ord. O-C-97-10, passed 12-22-1997)

### § 153.099 PERFORMANCE STANDARDS.

All special exceptions shall comply with the requirements of this section. In order to determine whether a proposed use will conform to the requirements of this chapter, the Board of Zoning Appeals may also obtain a qualified consultant to testify, whose cost for services shall be borne by the applicant.

- (A) *Fire protection.* Fire prevention and fighting equipment acceptable to the National Insurance Association shall be readily available when any activity involving the handling or storage of flammable or explosive materials is carried on.
- (B) *Electrical disturbance.* No activity shall cause electrical disturbance adversely affecting radio or other equipment in the vicinity.
- (C) *Noise.* Noise which is determined to be objectionable because of volume, frequency or beat shall be muffled or otherwise controlled, except fire sirens and related apparatus used solely for public purposes shall be exempt from this requirement.
- (D) *Vibrations.* Vibrations detectable without instruments on neighboring property in any district shall be prohibited.

(E) *Odors.* No malodorous gas or matter shall be permitted which is discernible on any adjoining lot or property.

(F) *Air pollution.* No pollution of air by flyash, dust, smoke, vapors or other substance shall be permitted which is harmful to health, animals, vegetation or property.

(G) *Glare.* Lighting devices which produce objectionable direct or reflected glare on adjoining properties or thoroughfares shall not be permitted.

(H) *Erosion and sediment.* All developments shall provide for adequate control of sediment and erosion by wind or water, both on-site and off-site, to prevent damage to property and provide for the safety and health of the community. The Commission may receive recommendations from County Soil and Water Conservation District as requested.

(I) *Water pollution.* Water pollution shall be subject to the standards established by the State Stream Pollution Control Board.

(J) *Water management.* All developments shall provide for management of surface and sub-surface water to adequately provide for safe removal, both on-site and off-site. The Commission may receive recommendations from County Soil and Water Conservation District as requested.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.100 NONCONFORMING USES.**

The Board of Zoning Appeals shall have the power to authorize changes of lawful nonconforming uses as follows.

(A) A nonconforming use which occupies a portion of a structure or premises may be extended within the structure or premises as they existed when the prohibitory provision took effect, but not in violation of the area and yard requirements of the district in which the structures or premises are located. No change of a nonconforming use shall entail structural alterations or any additions other than those required by law for the purpose of safety and health.

(B) The Board may impose those conditions as it deems necessary for the protection of adjacent property and the public interest.

(Ord. O-C-97-10, passed 12-22-1997)

### **§ 153.101 CONDITIONS AND COMMITMENTS RELATED TO A DECISION BY THE BOARD OF ZONING APPEALS.**

(A) *Conditions imposed by Board of Zoning Appeals; affidavit of compliance.*

(1) Whenever the decision of the Board of Zoning Appeals is conditioned upon petitioner's compliance with a requirement imposed by the Board concerning construction or site development (e.g., installation of landscaping, fencing, paving or any comparable requirement) the petitioner shall be required to notify the Board of Zoning Appeals of the timely fulfillment of the requirement by filing with the Zoning Administrator an affidavit of compliance in a form approved by the Zoning Administrator. If the time for fulfillment of the condition is stated in the Board's decision, the affidavit shall be filed within 30 days after the time allowed in the Board's decision. If the time for fulfillment for the condition is not stated in the Board's decision, the affidavit shall be filed within 30 days after the commencement of the use or completion of construction authorized by the Board's decision, whichever is earlier.

(2) Failure to comply with any conditions imposed by the Board of Zoning Appeals shall constitute a violation enforceable pursuant to the procedures and provisions in § 153.999.

(B) *Commitments; recording.*

(1) If deemed advisable, the Board of Zoning Appeals may require the petitioner to make written commitments concerning the use or development of the subject property.

(2) The commitments shall be reduced to writing in recordable form and signed by the owners of the real estate. The commitments shall authorize their recording by the Zoning Administrator upon the grant of the variance, conditional use or contingent use petition by the Board of Zoning Appeals.

(3) The commitments may be modified or terminated by a decision of the Board of Zoning Appeals made at public hearing after proper notice has been given. Any modification or termination of the commitments approved by the Board shall not be in full force and effect until reduced to writing by the present owner(s) of the real estate, endorsed by the Board and recorded in the Office of the Recorder of the county.

(Ord. O-C-97-10, passed 12-22-1997) Penalty, see § 153.999

## **AMENDMENTS**

### **§ 153.115 GENERAL.**

The Board of County Commissioners may introduce and consider amendments to this chapter and to the zone maps, as proposed by the County Commissioners, by the Plan Commission or by the owners of 50% or more than the area involved in the petition.

(Ord. O-C-97-10, passed 12-22-1997)

#### **§ 153.116 PETITIONS.**

Petitions for amendment shall be filed with the County Auditor. The petitioner shall pay a filing fee therefor in the sum of \$200, and the petitioner, upon the filing, shall, whether or not the proposed amendment is enacted, pay all costs and expenses connected with the petition including the drafting, advertising and recording of the ordinance.

(Ord. O-C-97-10, passed 12-22-1997)

#### **§ 153.117 REFERRAL.**

Any proposed amendment not originating from the Plan Commission shall be referred to the Plan Commission for consideration and report before any final action is taken by the County Commissioners. The Plan Commission shall hold a public hearing as prescribed by law, and report its findings and recommendations in writing to the County Commissioners within reasonable time after the public hearing as the County Commissioners may specify in the referring action.

(Ord. O-C-97-10, passed 12-22-1997)

#### **§ 153.118 NOTICE.**

Prior to the adoption of any amendment or special exception, notice of the proposed amendment or special exception shall be given by the Plan Commission by publication of notice in one newspaper of general publication published in this county at least ten days prior to the date set for hearing, and by mailing a copy of the notice to each abutting or adjoining land owner by registered mail return receipt requested at least ten days prior to the date set for hearing. A publisher's affidavit and the mail receipts shall serve as proof of notice in accordance with this section.

(Ord. O-C-97-10, passed 12-22-1997)

#### **§ 153.119 ACTION.**

After receiving the Plan Commission's report, the County Commissioners may proceed to take action on the proposed amendment. In the event the report of the Plan Commission is adverse to the proposed amendment, the amendment ordinance shall not be passed except by a unanimous affirmative vote of the County Commissioners. Failure of the County Commissioners to pass the proposed amendment ordinance by an affirmative vote within 90 days after its rejection by the Plan Commission shall constitute rejection of the proposed amendments and it shall not be reconsidered by the Plan Commission or County Commissioners until the expiration of one year after the date of its original rejection by the Plan Commission.

(Ord. O-C-97-10, passed 12-22-1997)

#### **§ 153.999 PENALTY.**

It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain or use any structure or land in violation of any regulation in or any provisions of this chapter or of any regulation enacted hereunder by the Board of Zoning Appeals. The Board or the Plan Commission may institute a suit for mandatory injunction directing the removal of a structure erected in violation of this chapter. Any structure or use that violates this chapter shall be deemed to be a common nuisance and the owner of the structure or land shall be liable for maintaining a common nuisance. Any person who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$10 and not more than \$300. Each day the violation continues shall constitute a separate offense. Further, the person shall be liable for the recovery of the reasonable cost of litigation, including attorney fees and court costs, in any action taken to enforce the provisions of the county's zoning regulations.

(Ord. O-C-97-10, passed 12-22-1997; Ord. O-C-04-5, passed 5-19-2004)