

**AN ORDINANCE ESTABLISHING  
MINIMUM COMPREHENSIVE ZONING STANDARDS FOR  
THE TOWN OF DALEVILLE, INDIANA**

**ARTICLE I TITLE**

This Ordinance shall be known as the Daleville Comprehensive Zoning Ordinance.

**ARTICLE II PURPOSE**

The purpose of this Ordinance is to encourage units of government to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to that end.

**ARTICLE III AUTHORITY**

Generally this chapter is promulgated and enacted by the town, by and through the actions of its Town Council by recommendation and approval of the Planning and Zoning Board under and pursuant to those powers authorized by the Indiana Home Rule Act, I.C. 36-1-3-1 et seq. and more specifically I.C. 36-7-2-2. The Planning and Zoning Board is an advisory board as provided by I.C. 36-7-4-100 et seq.

**ARTICLE IV JURISDICTION**

The provisions of this Ordinance shall apply to all the incorporated territory of the Town of Daleville, Indiana.

**ARTICLE V INTERPRETATION**

The provisions of this Ordinance shall be minimum requirements. This Ordinance is not intended to abrogate any law, easement, covenant or private agreement. Whenever the regulations provided in this Ordinance impose greater restrictions on the character of the use of buildings or lands than are imposed under any other law of the State of Indiana, then the regulations established by virtue of this Ordinance shall prevail only if they assure the promotion of the health, safety, convenience and welfare of the citizens.

**ARTICLE VI SEPARABILITY**

The provisions of this Ordinance are separable. If any court of competent jurisdiction shall adjudge any of its provisions to be invalid, such judgment shall not affect any other provisions not specifically included in said judgment. If any court of competent jurisdiction shall adjudge invalid the application

of any provision of this Ordinance to a particular property, building or other structure, such judgment shall not affect the application of said provisions to any other property, building or structure not specifically included in said judgment.

## **ARTICLE VII STATUS OF PREVIOUS ORDINANCES**

Any and all ordinances passed by the town council of the Town of Daleville, Indiana, under the provisions of IC 18751 through IC 187599, IC 18731 through IC 187313 of the Burns Indiana Statutes previous to the enactment of this Ordinance, are deemed repealed.

## **ARTICLE VIII STATUS OF PREVIOUS ACTIONS**

### **ARTICLE VIII**

#### **Section 1 BUILDING PERMITS**

Where a building permit for a building or structure has been issued in accordance with existing laws prior to the enactment of this Ordinance, said building or structure may be completed according to the approved plans upon which the building permit was issued, provided construction is begun within ninety (90) days after the enactment of this Ordinance and diligently pursued to completion. Such building or structure may, upon completion, be occupied under a Certificate of Occupancy by the use for which it was originally designated.

### **ARTICLE VIII**

#### **Section 2 VARIANCES: EXCEPTIONS: SPECIAL USES**

Where the Daleville Board of Zoning Appeals has granted a variance, exception or special use prior to the enactment of this Ordinance, the permitted variance, exception or special use shall be implemented within ninety (90) days from the granting thereof and pursued diligently to completion; otherwise, the granting of such variance, exception or special use is automatically revoked.

## **ARTICLE IX GENERAL PROVISIONS**

### **ARTICLE IX**

#### **Section 1 CONFORMANCE**

##### **A USE**

No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, expanded or enlarged except in conformity with all the provisions of this Ordinance, and after the necessary permits have been obtained.

##### **B HEIGHT**

No building or structure shall be erected or constructed nor shall any existing building or structure be reconstructed, moved, expanded or enlarged so as to exceed the height limitations established in this Ordinance.

#### **C LOT COVERAGE**

No building or structure and its accessory uses shall be erected or constructed nor shall any existing building or structure and its accessory uses be reconstructed, moved, expanded or enlarged so as to occupy a greater percentage of a lot than the limits established in this Ordinance.

#### **D OPEN SPACE**

No yard or open space or off-street parking or loading space provided about a building or structure for the purpose of complying with the provisions of this Ordinance shall be considered as providing yard, open space or off-street parking or loading space for any other building or structure. No yard or lot existing at the time of the enactment of this Ordinance shall be reduced in dimension or area below the minimum standards provided in this Ordinance. Yards or lots created after the enactment of this Ordinance shall meet all requirements established herein.

### **ARTICLE IX**

#### **Section 2 UNLAWFUL USES**

Any building, structure or use which was not lawful prior to enactment of this ordinance, and which is still in violation of the provisions of this Ordinance, shall be considered to be a nonconforming building, structure or use under the terms of this Ordinance. Any building, structure or use which became not lawful after enactment of this ordinance, and which is still in violation of the provisions of this Ordinance, shall be considered unlawful.

### **ARTICLE IX**

#### **Section 3 YARDS: LOT COVERAGE**

No single family, two family or multiple family dwelling, together with accessory buildings or structures, shall occupy more than the following percentages of the total area of the lots, exclusive of right-of-ways:

Residence Zones 35% lot coverage

### **ARTICLE IX**

#### **Section 4 RIGHTOFWAY: MEASUREMENT OF SETBACKS**

When an official plan for the major and secondary highways in the Town of Daleville, Indiana, shall have been adopted by the Town Council, then all setbacks for buildings and structures shall be

measured from the proposed rightofway lines as expressed in such plan. For the purpose of this Ordinance, the rightofway of any street shall be deemed to be fifty (50) feet unless a larger rightofway is required on the Official Thoroughfare Plan for the Town of Daleville, Indiana, in which case the larger rightofway shall control.

## **ARTICLE IX**

### **Section 5 MANUFACTURED HOUSING**

Manufactured homes and mobile homes shall be used in the manner for which they were designed in accordance with the following requirements.

#### **A PERMANENT PLACEMENT**

The establishment, location and use of manufactured homes as scattered site residences shall be permitted in any zone permitting installation of a dwelling unit, subject to the requirements and limitations applying generally to such residential use in the appropriate zone, and provided such homes shall meet the following requirements and limitations:

1. The home shall meet all requirements applicable to single-family dwellings and possess all necessary improvement location, building and occupancy permits and other certifications as required by this Ordinance.
2. The home shall meet the minimum square footage requirements for the appropriate zone.
3. Tongue and hitch apparatus shall be removed and the manufactured home shall be installed on a foundation in accordance with the requirements of the Indiana One and Two Family Dwelling Code and all Indiana amendments thereto. Skirting and/or permanent perimeter enclosures shall be required. Skirting, when installed, shall be of material suitable for exterior exposure and contact with the ground. Permanent perimeter enclosures shall be constructed of materials as required by the above-cited Dwelling Code for regular foundation construction. Skirting shall be installed in accordance with the skirting manufacturer's installation instructions. Skirting shall be adequately secured to assure stability, to minimize vibration and susceptibility to wind damage, and to compensate for possible frost heave.
4. The terms of Article IX, Section 5(A) shall apply to the placement of manufactured housing located outside mobile home parks only.
5. The home shall have been constructed after January 1, 1981.

#### **B TEMPORARY PLACEMENT**

1. Permitted Placement the placement of manufactured homes and mobile homes shall be permitted within the incorporated area of Daleville, and outside of mobile home parks, on a temporary basis in the following circumstances:

- a. For use of a manufactured home or mobile home as a caretaker's quarters or a construction office at a job site.
  - b. For use of a manufactured home or mobile home as a temporary residence, located on the building lot, during the course of construction, remodeling or repair of a site built dwelling.
  - c. For use of a manufactured home or mobile home as a temporary residence, located adjacent to an existing residence, when the Board of Zoning Appeals has approved the temporary placement by granting a variance to the owner or contract buyer whose own health or the health of another necessitates care and where the facts show that an unnecessary hardship would occur if not permitted to locate a temporary residence adjacent to the residence of one who is able to provide such care or is in need of such care.
2. Provisions Regulating Permitted Placement a temporary use permit shall be obtained prior to placement of a manufactured home or mobile home for temporary use as herein defined. For use of a manufactured home or a mobile home as temporary residences, placement shall be additionally subject to:
    - a. Applicable health provisions for sanitary facilities.
    - b. Providing an adequate ground anchor.
    - c. Setbacks provisions as stated in the appropriate zone.
  3. Time Limitations for Temporary Placement A temporary use permit issued under Sections B (1) (a) and B (1) (b) herein shall be issued for a period not to exceed one (1) year. Any extension of the one (1) year limit shall require approval of a variance by the Board of Zoning Appeals under the established procedures for the filing of an appeal. A variance granted under Section B (1) (c) should specify the conditions of the temporary placement.

## **ARTICLE IX**

### **Section 6 PUBLIC UTILITIES**

The provisions of this Ordinance shall not be construed to limit or interfere with the construction, installation and maintenance of public utility transmission facilities subject to the following:

1. Above ground utility structures shall be located at least ten (10) feet from a fire hydrant, shall not adversely impact the line of sight for any driveway, shall be placed in compliance with the provisions for visibility at intersections, and shall not interfere with another utility's access to , maintenance of or operation of its facilities.
2. For above ground utility structures greater than three (3) feet in height and nine (9) cubic feet in volume, where practical and useful to ameliorate the aesthetic impact of the utility structure the Town may require that the utility company screen the utility structure with planting,

landscaping materials, fences, walls or any combination of these methods. Screening, if required, must be equally effective in all seasons.

All enclosed utility buildings shall comply with the Development Standards set forth in Article XXX and the setbacks contained in the underlying zone.

## **ARTICLE IX**

### **Section 7      PROPERTIES AFFECTED BY PUBLIC WORKS**

Where a building or structure, including a sign, is located on property acquired for public use by condemnation, purchase or otherwise, such building or structure may be relocated on the same lot or premises although the area provisions of this Ordinance cannot be reasonably complied with. Furthermore, where a part of such building or structure is acquired for public use, the remainder of such building or structure may be repaired, reconstructed or remodeled. Whenever any setback, greenbelt and/or landscaped area, provided to meet the requirements of this Ordinance, is removed by a public works project (i.e. road widening), the property from which the setback, greenbelt and/or landscaped area has been removed shall still be considered in compliance with this Ordinance.

## **ARTICLE IX**

### **Section 8      CHURCHES**

Nothing in this Ordinance shall be construed to exclude churches from any zone herein established, provided that any church building shall meet the yard, parking, height, and all other requirements contained in this Ordinance. No church building shall be located closer to an adjacent owner's property line, where said adjacent property is in a Residence Zone, than the following distances:

Residence Zone one hundred (100) feet

## **ARTICLE IX**

### **Section 9      PUBLIC BUILDINGS**

Nothing in this Ordinance shall be construed to exclude buildings owned, leased or used by a municipal, county, township, State or Federal government from any zone established in this Ordinance. However, all such buildings shall meet the yard, parking and height provisions of this Ordinance and no building shall be closer to an adjacent owner's property line, where said adjacent property is in a Residence Zone, than the following distances:

Residence Zone one hundred (100) feet

## **ARTICLE IX**

### **Section 10    TENTS & RECREATIONAL VEHICLES**

No tent shall be erected, used or maintained for living quarters in any zone. For the purpose of this Ordinance, the term "tent" shall mean a collapsible shelter of canvas or other material stretched and sustained by poles and used for outdoor camping.

Recreational vehicles may not be occupied as living quarters in any zone.

## **ARTICLE IX**

### **Section 11 VISIBILITIES AT INTERSECTIONS**

On a corner lot in any residential zone, nothing shall be erected, placed, planted or allowed to grow in such a manner as to impede vision between a height of three (3) feet and ten (10) feet above the centerline grades of the intersecting streets in an area bounded by the rightofway lines of such intersecting streets and a line adjoining points along said intersecting rightofway lines fifty (50) feet from the point of intersection of said rightofway lines.

## **ARTICLE IX**

### **Section 12 FENCES: WALLS: HEDGES**

A fence, screen or wall not more than eight (8) feet in height, or a hedge of thick growth of shrubs or trees maintained so as not to exceed eight (8) feet in height may be located in any side or rear yard in any zone, provided they shall not extend beyond the front wall of the building or, in the absence of a building, beyond the average setback of the buildings on the adjacent lots.

Fences, screens, walls, shrubs and trees extending beyond the front wall of the building shall not exceed fortytwo (42) inches in height and, when located in the yard along the street sides of a corner lot, must comply with Article IX, Section 11. Trees, shrubs, flowers and plants are not covered by this provision provided they do not produce a hedge effect.

This provision shall not be interpreted to prohibit the erection of an open mesh type fence enclosing a farm, school or playground site.

The Industrial Zone is exempt from the above provisions in that the above said provisions shall not be interpreted to prohibit the erection of a fence, screen, wall, shrub or trees not to exceed eight (8) feet in height.

## **ARTICLE IX**

### **Section 13 DIVISION OF A LOT**

No lot or parcel of land shall be hereafter divided into two (2) or more lots or parcels of land unless all lots or parcels of land resulting from such division shall conform to the provisions of this Ordinance. Any division of a lot or parcel of land, which shall result in a violation of this section, shall make the buildings or structures on said lot or parcel of land unlawful.

## **ARTICLE IX**

### **Section 14 ACCESSORY USES AND STRUCTURES**

#### **A DEFINITION**

## 1. GENERAL DEFINITION

Accessory uses/structures shall be permitted in all zones in accordance with the provisions of this section. Accessory uses/structures:

- a. Shall be incidental and commonly associated with the operation of the principal use of the lot.
- b. Shall be operated and maintained under the same ownership and on the same lot as the principal use.
- c. Shall, in residence zones, be clearly subordinate in height, area, and bulk to the principal use served.
- d. Shall not be located closer to any lot line than the minimum setback line required, unless specified otherwise in this Ordinance.
- e. Shall not be permitted, in residence zones, prior to the erection and operation of the principal use.

Such appurtenant features as walks, driveways, curbs, drainage installations, mailboxes, lamp posts, bird baths, fences, walls, uncovered patios, outdoor fireplaces, dog houses, tree houses, playground apparatus, waterfalls, or permanent landscaping shall be considered incidental uses/structures and not as accessory uses/structures subject to the provisions herein.

## 2. TYPES OF ACCESSORY USES/STRUCTURES

- a. Such buildings or structures as garages, carports, canopies, porch enclosures, bath houses, cabanas, gazebos, storage buildings, greenhouses, guard houses, video satellite disks, fallout shelters, and similar accessory buildings or structures.
- b. Signs, as regulated in Article XXX, Section 3 of this Ordinance.
- c. Swimming pools swimming pools in residence zones may be installed only as accessory to a dwelling for the private use of the owners and occupants of such dwelling and their families and guests, or as accessory to a nursery school or day camp for children, and only on the conditions as follows:
  - 1) Such pool shall be installed in the rear yard of the premises.
  - 2) Access to residential pools shall be restricted by one (1) of the following means:
    - a) Walls or fencing not less than four (4) feet high and completely surrounding the pool and deck area with the exception of self-closing and latching gates and doors, both



capable of being locked.

- b) Other means not less than four (4) feet high and deemed impenetrable by the enforcing authority at the time of construction and completely surrounding the pool and deck area when the pool is not in use.
- c) A combination of subsections (a) and (b) that completely surrounds the pool and deck with the exception of self closing and latching gates and doors that are capable of being locked. This applies to subsections (a) and (b) and this subdivision only.
- d) A power safety pool cover that shall:
  - (1) Provide a continuous connection between the cover and the deck, so as to prohibit access to the pool when the cover is completely drawn over the pool;
  - (2) Be mechanically operated by a key or key and switch such that the cover cannot be drawn open or retracted without the use of a key;
  - (3) Is installed with track, rollers, rails, guides, or other accessories necessary to accomplish clauses (1) and (2), in accordance with the manufacturer's instructions; and
  - (4) Bear an identification tag indicating that the cover satisfies the requirements of ASTM F1346 for power safety pool covers.
- d. Amateur radio sending and receiving antennae, provided the height thereof including masts shall not exceed seventy-five (75) feet measured from the finished lot grade at the base of the tower.
- e. Management office in multifamily dwelling complex and other structures providing services normally associated with tenants' convenience.
- f. Small Wind Energy Systems – small wind energy systems are a permitted accessory use in all zoning districts subject to the following requirements:
  - 1) Setbacks. A wind tower for a Small Wind Energy System shall be set back a distance equal to its total height plus the length of one blade from:
    - a) Any State or local roadway right-of-way, existing or proposed, whichever is greater;
    - b) Any right of ingress or egress on the owner's property;
    - c) Any overhead utility lines;

d) All property lines; and

e) Any existing guy wire, anchor or other small wind energy tower.

A small wind energy system shall not be located in any front yard area.

- 2) Access. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 10 feet above the ground.
- 3) Electrical Wires. All electrical wires associated with a Small Wind Energy System, other than wires necessary to connect the wind generator to the wind tower wiring, the wind tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
- 4) Lighting. A wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). Lighting of other parts of the Small Wind Energy Systems, such as appurtenant structures, shall be limited to that required for safety purposes, and shall be reasonably shielded from adjacent residential uses and residential zones.
- 5) Height. A small wind energy system shall not exceed one hundred fifty feet (150'), however, no wind energy system shall be constructed, altered, or maintained so as to project above any of the imaginary airspace surfaces as regulated by the State and the FAA guidance on airspace protection.
- 6) Appearance, color, and finish. The wind generator and wind tower shall remain painted or finished the color or finish that was originally applied by the manufacturer.
- 7) Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, wind tower, building, or other structure associated with a Small Wind Energy System, visible from any public road shall be prohibited.
- 8) Noise and Signal Interference. Sound produced by small wind energy systems under normal operating conditions, as measured at the property line, shall comply with limitations contained in local noise ordinances. Sound levels may be exceeded during short term events such as utility outages and/or severe wind storms. A small wind energy system shall not interfere with communication systems such as, but not limited to, radio, television, telephone, satellite, or emergency services communication systems.
- 9) Utility notification and interconnection. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid

systems shall be exempt from this requirement. Any property owner seeking to construct a Small Wind Energy System and connect such system to the main power grid with the capability of transporting energy back to their main power company shall meet all applicable requirements of the Indiana Utility Regulatory Commission for approval and provide documentation of such approval prior to construction and being issued a building permit.

- 10) Ground Clearance: The minimum clearance between the lowest extension of a rotor blade tip and the highest point of the ground within thirty feet of the tower base shall be thirty (30) feet.
- 11) Braking: A small wind energy system shall be equipped with a manual and automatic braking device capable of halting operation.
- 12) Compliance & Permits. A Small Wind Energy System shall comply with all applicable building and electrical codes. Applications for building permits shall include standard drawings of the wind generator and stamped engineered drawings of the tower, base, footings, and/or foundation as provided by the manufacturer. Applications for building permits shall also include line drawings of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- 13) Abandonment: A Small Wind Energy System that is out-of-service for a continuous 6 month period will be deemed to have been abandoned. The Zoning Administrator may issue a Notice of Abandonment to the owner of a Small Wind Energy System that is deemed to have been abandoned. The Owner shall have the right to respond in writing to the Notice of Abandonment setting forth the reasons for operational difficulty and providing a reasonable timetable for corrective action, within 30 days from the date of the Notice. The Administrator shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the wind energy system has not been abandoned. If the Small Wind Energy System is determined to be abandoned, the owner shall remove the wind generator and tower at the Owner's sole expense within 3 months of the date of Notice of Abandonment. If the owner fails to remove the wind generator and wind tower, the Administrator may pursue a legal action to have the wind generator and tower removed at the Owner's expense.

Small Wind Energy Systems shall not be attached to any building, including guy wires. Meteorological Towers (Met Tower) shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a Small Wind Energy System. Each lot of record is eligible for one Small Wind Energy System only, provided all requirements can be met, except that lots greater than five (5) acres may be eligible for two small wind energy systems, provided all requirements can be met.

- g. Building Mounted Wind Systems, provided the system has a nameplate capacity (manufacturer's rating) of 10 kilowatts or less than projects no more than fifteen (15) feet above the highest point of the roof, excluding chimneys, antennae and other similar structures.
- h. Solar collectors, roof mounted or ground mounted.

## **B HEIGHT: SETBACKS**

In any residence zone, an accessory building shall not exceed seventeen (17) feet in height and, when located in the rear yard, shall not be closer than three (3) feet to the side and rear lot lines. In non-residence zones, an accessory building shall not exceed the height provision as established in the appropriate zone and, when located in the rear yard, shall not be closer than three (3) feet to the side and rear lot lines.

## **C ON CORNER LOT**

Accessory buildings located on the street side of a corner lot shall be setback a minimum the same distance as that required for the main building. If the main building setback is less than the required setback, then the accessory building shall be setback a minimum the average of the main building setback and the setback of the main building on the adjacent property (or the required setback of the adjacent property, whichever is the least).

## **D ON SIDE YARD**

For an interior lot, an attached accessory building, or garage located on the side yard of a dwelling, shall be considered a part of the dwelling and not an accessory building and shall comply with the provisions of this Ordinance.

# **ARTICLE IX**

## **Section 15 NONCONFORMING USES AND STRUCTURES**

### **A GENERAL**

Within the zones established in this Ordinance, there exist nonconforming uses and structures which may continue to exist in accordance with the following provisions.

### **B LOTS**

In any zone permitting only singlefamily dwellings, a singlefamily dwelling shall be permitted on a lot which does not comply with the width and area requirements of this Ordinance provided such lot was of record at the time of enactment of this Ordinance; and provided further that adjustments in yards are in accordance with provisions of this Ordinance. If two or more lots or parts of lots are in single ownership and enjoy continuous frontage at the time of the enactment of this Ordinance, and if all or part of such lots do not meet the width and area standards contained in this Ordinance, the lands

involved shall be considered to be an undivided parcel. No portion of said parcel shall be used in a manner that may reduce compliance with the provisions of this Ordinance.

## C USES OF LAND

A nonconforming use of land shall not be enlarged, expanded nor extended to occupy a larger area of land than was occupied at the time of the enactment of this Ordinance. A nonconforming use may be extended throughout any part of an existing structure, which was arranged for such use prior to the enactment of this Ordinance. Such use shall not be moved in whole or in part to another location on the lot or parcel of land other than that occupied by the use at the time of the enactment of this Ordinance. If any such use ceases for a period of more than one (1) year, (except when government action or legal proceedings impede access to the premises, as determined by the Board of Zoning Appeals), any subsequent use of such land shall conform with the provisions of this Ordinance unless sixty-six percent (66%) or more of the surrounding uses of land within a six hundred and sixty (660) foot radius are also nonconforming uses of the same restriction as said subsequent use, thereupon, the proponent of said subsequent use shall apply for a Certificate of Nonconformity under the established procedures and additionally provide signed affidavits affirming the existence of surrounding nonconforming uses, as herein defined, of the same restriction.

## D STRUCTURES

A nonconforming structure shall not be moved in whole or in part to another location on the lot or parcel of land unless said relocation would bring the structure into conformance with the provisions of this Ordinance. If a nonconforming structure is made to conform, any future expansion or enlargement of said structure shall be in conformance with the provisions of this Ordinance. A nonconforming structure may be expanded or enlarged provided such expansion or enlargement would not further encroach upon the nonconforming characteristic of the structure.

## E SUBSTITUTIONS

A nonconforming use may be changed to another nonconforming use of the same or greater restriction provided said change does not cause further violation of the Performance Standards of this Ordinance.

## ARTICLE IX

### Section 16 REPAIRS: RESTORATION

Nothing in this Ordinance shall prevent the repair of a nonconforming structure. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means, it may be reconstructed provided it does not further encroach upon the nonconforming characteristic of the structure. Nothing shall prevent the repair of a structure containing a nonconforming use and, where the structure is destroyed by any means, the resumption of said use shall be subject to the provisions of Article IX, Section 15(C).

## ARTICLE IX

## **Section 17     PROOF OF NONCONFORMITY**

A Certificate of Nonconformity shall transfer with ownership of property and shall be considered proof of a legal nonconforming use with said use being subject to the applicable provisions of Article IX, Section 15.

Upon written request by the Administrative Zoning Officer or by his/her own volition, the owner of a property shall present documentary evidence to said Officer that a building or use owned by him/her qualifies as a legal nonconforming use. Such evidence shall be presented in conjunction with an application for a Certificate of Nonconformity, if needed. Such evidence shall document the preceding five (5) years from the date of submission for said Certificate and may include retail merchant certificates (for commercial and industrial uses), vouchers related to material purchased for construction, written testimony of adjoining property owners (past/present), photographs, photo static copies of deeds or rulings made on property, rent receipts, etc.

Upon submission of such evidence, the Administrative Zoning Officer may perform an inspection of the premises on a date and time agreeable to the owner. No inspection shall be attempted unless and until an agreement is reached with said owner. Following such inspection and/or submission of the application, the Administrative Zoning Officer shall respond within thirty (30) days by issuing a Certificate of Nonconformity if he/she finds that the information given is satisfactory and the premises are, in his/her opinion, a de facto nonconforming use, or by denying a Certificate of Nonconformity. Appeals from a decision of the Administrative Zoning Officer shall be filed in accordance with the provisions of this Ordinance as set forth in Article XXXII, Section 5.

## **ARTICLE IX**

### **Section 18     RESIDENTIAL FACILITIES FOR DEVELOPMENTAL DISABILITIES AND MENTAL ILLNESS**

The provisions of this Ordinance shall not be construed to exclude a residential facility for individuals with a developmental disability, for not more than eight (8) individuals, which is duly licensed by the State of Indiana. The facility shall meet the same zoning requirements, standards and building codes as other single dwelling unit structures in the same zone.

The provisions of this Ordinance shall not be construed to exclude a residential facility for individuals with mental illness, which is duly certified and/or licensed by the State of Indiana, from a residential area solely because such residential facility is a business or because the persons residing in the residential facility are not related provided that there is, at minimum, a linear distance of three thousand (3,000) feet from one such facility to another such facility as measured from the lot lines of the total properties containing the residential facilities. The facility shall meet all other zoning requirements, codes and laws.

A residential facility which is not certified and/or licensed by the State of Indiana as a residential facility for individuals with a developmental disability or a residential facility for individuals with a mental illness shall be subject to all of the provisions of this Ordinance.

## **ARTICLE IX**

### **Section 19 ADULT ENTERTAINMENT BUSINESS**

The establishment of any adult entertainment business shall be prohibited if such business is within five hundred (500) feet of two other such businesses or within five hundred (500) feet of the property line of any church, school, public building, or public land or the boundary line of any existing residence zone. The distance between one adult entertainment business and another adult entertainment business shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of each business. The distance between an adult entertainment business and any church, school, public building, public land, residence zone shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the adult entertainment business to the nearest property line of any church, school, public building, or public land or the closest boundary line of any residence zone. If any adult entertainment business is part of or included within a building or structure containing multiple commercial uses, only the portion of the building or structure occupied by such adult entertainment business shall be included in determining the closest exterior wall of said establishment. No adult entertainment establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public way.

## **ARTICLE X GENERAL EXCEPTIONS**

### **ARTICLE X**

#### **Section 1 STRUCTURES OTHER THAN BUILDINGS**

Towers, chimneys, stacks, spires, penthouses, cupolas, water tanks, silos, windmills, monuments, domes, grain elevators and like structures may be built to a greater height than established in this Ordinance except in the approach area of any airport where no structure shall be built which exceeds the maximum height permissible under the rules and regulations of any governmental agency.

### **ARTICLE X**

#### **Section 2 PROJECTIONS**

Cornices, eaves, sills, canopies or similar architectural features, but not including bay windows or vertical projections, may extend or project into a required side yard not more than eighteen (18) inches and maximum of thirty-six (36) inches into a front or rear yard. Any enclosed porch shall be considered as part of the main building.

### **ARTICLE X**

#### **Section 3 SETBACKS**

Where a new building or an addition to an existing building is proposed on a lot which adjoins two (2)

or more lots occupied by buildings, the setbacks for such new building or addition to an existing building shall be the mean setback of the buildings on each side of the new building or addition to an existing building.

## **ARTICLE X**

### **Section 4 RESIDENTIAL SIDE YARD**

For a lot having a width of not less than forty (40) feet and not more than fifty (50) feet at the building line at the time of the enactment of this Ordinance, residence buildings may have a minimum side yard of five (5) feet.

## **ARTICLE XI ZONES**

## **ARTICLE XI**

### **Section 1 GENERAL**

In order to carry out the purposes of this Ordinance, the incorporated territory of the Town of Daleville, Indiana, is hereby divided into zones or districts paying reasonable regard to existing conditions, the character of buildings erected in each zone, the most desirable use for which the land in each zone may be adapted, and the conservation of property values throughout the Town.

## **ARTICLE XI**

### **Section 2 CLASSES OF ZONES**

The incorporated territory of the Town of Daleville, Indiana, is hereby divided into the following zones:

- R Residence Zone
- B Business
- I Industrial Zone

No agricultural use districts are provided in the amended Comprehensive Master Plan. Agricultural use is a grandfathered use within the town which may not be expanded or enlarged nor may additional parcels be subjected to such a use.

## **ARTICLE XI**

### **Section 3 ZONE MAPS**

#### **A GENERAL**

The zones referred to in Article XI, Section 2, and their boundaries are shown upon maps that are hereby made a part of this Ordinance. Such maps are designated as the "Zone Maps for the Town of Daleville, Indiana". The maps and all notations, references and other information shown thereon shall



be as much a part of this Ordinance as if matters set forth in them were all fully described in this Ordinance.

## B IDENTIFICATION AND RECORDING

All county zone maps shall be identified by the signature of every member of the Town Council of the Town of Daleville, Indiana, and shall be attested by the Secretary of the Board. Following the adoption of the Town maps by the proper legislative authority, a copy of this Ordinance, inclusive of Zone Maps, shall be filed with the County Auditor and the Recorder of the County of Delaware, Indiana.

## C ZONE BOUNDARIES

Where any property is indicated in the Zone Maps as acreage and is not subdivided into lots, or where a zone boundary line shall be determined by using the scale shown on the map, zone boundaries are intended to follow lot lines, property lines, railroad right-of-ways, city and county limits, shorelines, lines of streams, canals, lakes or other bodies of water. Where a boundary divides a lot that was in single ownership at the time of the enactment of this Ordinance, the zone applying to the larger portion of the lot shall be considered as extending to the entire lot. If each portion of the lot is equal in size, then the most restrictive zone shall apply to both portions of the divided lot.

## D RESTORATION

In the event any official Zone Map may become damaged, destroyed, lost or difficult to interpret due to physical deterioration or the nature and number of changes made, the Town Council of the Town of Daleville, Indiana, may by Ordinance and after public hearing adopt a new official map.

## E CHANGES

No changes shall be made to the Zone Maps of the Town of Daleville, Indiana, except in full conformity with the procedures set forth in this Ordinance. Zone Maps shall be revised every year in December, and all zone changes officially adopted by the proper governmental body shall be incorporated on the maps. The maps as updated shall be submitted to the Planning and Zoning Commission for its consideration. If the Commission is satisfied that the changes are correct, it shall forward the maps to the Town Council of the Town of Daleville, Indiana, for adoption. Once adopted, a copy of the updated maps shall be filed with the County Auditor and the Recorder of the County of Delaware, Indiana.

## F STREET VACATION

Whenever a street, road, alley, railroad right-of-way or other public way is officially vacated, the zones on each side of such vacated way shall be extended to the center of such street, road, alley, railroad right-of-way or public way. This change shall be automatically achieved and shall not require following procedures established in this Ordinance for proposed zone changes.

## **G SIMILAR USES**

Similar uses to those permitted in each zone may be allowable. Whether a certain use is similar to a use listed in a specific zone, the Town of Daleville Planning and Zoning Commission under established procedures shall determine such similarity.

## **H PROCEDURAL**

Each proposed zoning change referred to the Town Council of the Town of Daleville, Indiana, shall set forth the exact use for which the petitioner is requesting the change. If the Town Council acts favorably on the requested change, such change shall be only for the specific use requested by the petitioner and for no other use. Should the petitioner wish to change the use from the use originally granted but within the same general zone, he shall submit a new petition and follow established procedures as for a new change in zoning. Should the petitioner to whom a zone change is granted for a specific use fail to begin construction or installation of a use approved by the Town Council of the Town of Daleville, Indiana, within one (1) year after the passage of the change of zone, the Administrative Zoning Officer shall so inform the said Town Council, which may initiate the proceedings to rezone the property subject of the zone change to its original classification.

Within sixty (60) days prior to the expiration of the one (1) year period, the petitioner may present the Town Council with a bill of particulars setting forth reasons for failure to commence construction or use. The Town Council may consider said reasons in deciding whether or not to initiate a change in zone as herein provided.

# **ARTICLE XII RESIDENCE ZONE**

## **ARTICLE XII**

### **Section 1 USAGE PROVISIONS**

#### **A PERMITTED USES**

No building, structure or land shall be used and no building or structure shall hereafter be erected, structurally altered, enlarged or maintained except for the following uses:

1. Single family dwellings.
2. Buildings or structures owned, leased or used by municipal, township, county, State or Federal governments.
3. Religious institutions.
4. Public schools, colleges, universities, nursery schools, child care facilities when licensed through the State as home day care, all subject to the standards contained in this ordinance.

5. Outdoor advertising as regulated in this Ordinance.
6. Temporary buildings used during the construction of homes in a subdivision, including storage of lumber and building materials for a period not to exceed the duration of such construction.

## **B SPECIAL USES**

The following uses shall be allowed when approved by the Town of Daleville Board of Zoning Appeals under the established procedures set forth in Article XXXI, Section 2 (A), and subject to the meeting the standards set forth in Article XXXI as specified herein:

1. Country clubs; golf courses; driving tees; miniature golf when part of a country club, all when located at least two hundred (200) feet from a residence and provided they comply with the standards set forth in Article XXXI, Section 2 (B).
2. Hospitals provided that no building or structure shall be located less than two hundred (200) feet from a residence, school, or church and that the premises upon which they are built shall be not less than ten (10) acres in area, and provided they comply with the standards set forth in Article XXXI, Section 2 (B).
3. Charitable institutions; private clubs, all provided they comply with the standards set forth in Article XXXI, Section 2 (B).
4. Mausoleums and cemeteries, and mortuaries and/or funeral homes, but not including crematoriums, provided that no building shall be closer than two hundred (200) feet from a residence, school, church, hospital or institution for human care and that the site for mausoleums and cemeteries shall be not less than ten (10) acres in area, and provided they comply with the standards set forth in Article XXXI, Section 2 (B).
5. Home occupations, provided they comply with the standards set forth in Article XXXI, Section 8.
6. Nursing homes, provided they comply with the standards set forth in Article XXXI, Section 2 (B).
7. Planned Unit Development (PUD).

## **ARTICLE XII**

### **Section 2 LOT WIDTH AND AREA**

The width of a lot shall be not less than one hundred (50) feet at the building line nor less than twenty thousand (6,250) square feet in area, exclusive of rights-of-way.

## **ARTICLE XII**

### **Section 3 FRONT YARD**

There shall be a front yard not less than thirty (25) feet in depth measured from the right-of-way line to the front wall of the building.

## **ARTICLE XII**

### **Section 4 SIDE YARD**

There shall be two (2) side yards, each not less than ten (6) feet in width measured at right angles to the side lot lines.

## **ARTICLE XII**

### **Section 5 REAR YARD**

There shall be a rear yard not less than thirtyfive (30) feet in depth measured at right angles to the rear lot line.

## **ARTICLE XII**

### **Section 6 HEIGHT**

No building or structure shall exceedtwo and one-half (2 1/2) stories or thirty (30) feet in height.

## **ARTICLE XII**

### **Section 7 MINIMUM FLOOR AREA**

The minimum floor area of any dwelling shall not be less than eight hundred and sixty-four (720) square feet, exclusive of garages, carports, open porches and breezeways.

## **ARTICLE XIII BUSINESS ZONE**

## **ARTICLE XIII**

### **Section 1 PERMITTED USES**

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered, enlarged or maintained except for the following uses:

1. Retail business.
2. Health centers; medical offices; veterinary hospitals and clinics.
3. Restaurants; cafes; lunchrooms.

4. Business and professional offices; political offices; union offices; real estate offices; banks.
5. Outdoor advertising as regulated in this Ordinance.
6. Parking lots; not parking garages.
7. Fraternal; philanthropic; civic and service organizations.
8. Gasoline stations; car washes, subject to the performance standards set forth in this Ordinance.
9. Photographic studios; print shops.
10. Hotels; motels; bed and breakfast inns.
11. Automobile sales, service and repair.
12. Wholesale business including distribution.
13. Light industrial uses.
14. Municipal buildings; fire and police stations; public parks and playgrounds; public utility structures.
15. Theaters (excludes sexually oriented businesses)
16. Laundries; dry cleaning establishments.
17. Churches; funeral homes; public and parochial schools.
18. Single family homes; two family homes; multi family housing.

## **ARTICLE XIII**

### **Section 2 FRONT YARD**

There shall be a front yard of not less than twentyfive (25) feet in depth measured from the rightofway line to the front wall of the building. Properties zoned business in the old town main corridors of Main Street, from Spring Street east to Sarah Street, and Walnut Street, from Daleville Road north to Washington Street, shall have no specific setbacks.

## **ARTICLE XIII**

### **Section 3 SIDE YARD**

There shall not be any minimum side yard requirements except that where a Business Zone abuts a Residence Zone no building shall be closer to any existing dwelling than fifty (50) feet.

## **ARTICLE XIII**

### **Section 4 REAR YARD**

There shall be a rear yard of not less than twentyfive (25) percent of the depth of the lot, but need not exceed twentyfive (25) feet.

## **ARTICLE XIII**

### **Section 5 HEIGHT**

No building or structure shall exceed three (3) stories or fortyfive (45) feet in height.

## **ARTICLE XIII**

### **Section 6 CONDITIONS**

Business establishments shall be of retail or service nature. Goods shall be sold at retail. Servicing and processing shall be conducted within completely enclosed buildings. Drivein establishments other than gasoline service stations, offering goods and services directly to customers waiting in parked vehicles shall not be permitted. Whenever a business establishment abuts a Residence Zone, the area between the business establishment and the Residence Zone shall be adequately buffered.

## **ARTICLE XIV INDUSTRIAL ZONE**

## **ARTICLE XIV**

### **Section 1 GENERAL**

The Industrial Zone is created to include industries whose manufacturing operations are carried on within enclosed buildings.

## **ARTICLE XIV**

### **Section 2 PERMITTED USES**

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered, enlarged or maintained except for the following uses:

1. Uses permitted in the Business Zone.
2. Machine, welding, tool and die shops.
3. Public utilities, private utilities.
4. Communication systems and appurtenances.
5. Mass transportation terminals, not including truck terminals.

6. Recreation areas established for the convenience and use of employees of a specific industry.
7. Temporary buildings and structures incidental to the development of land or to the erection of the same, provided such buildings and structures shall be removed at the termination of development or construction.
8. Radio and television towers, including studios and business offices.
9. Assembly operations for premanufactured parts.
10. Manufacture of nonalcoholic beverages and/or bottling of alcoholic and nonalcoholic beverages.
11. Office machinery electrical and mechanical.
12. Manufacture of portable household appliances; electric hand tools; electric motors; electric and neon signs.
13. Cloth products manufacturing from finished cloth.
14. Milk processing; bottling and manufacturing.
15. Jewelry manufacturing; engraving.
16. Food processing and packaging of products previously processed elsewhere.
17. Leather products manufacturing from finished leather.
18. Manufacturing of pharmaceuticals, medicines and cosmetics.
19. Manufacturing of optical goods, recording instruments.
20. Warehouse and distribution operations, completely enclosed.
21. Upholstering shops; manufacturing of mattresses.
22. Canning, bottling, processing and packing of food.
23. Manufacturing of cans and containers excluding glass containers.
24. Cabinet manufacturing.
25. Manufacture and assembly of communication equipment.

- 26. Electroplating operations.
- 27. Manufacturing of margarine products.
- 28. Manufacturing of office equipment.
- 29. Manufacturing of malt products.

## **ARTICLE XIV**

### **Section 3 FRONT YARD**

See Performance Standards.

## **ARTICLE XIV**

### **Section 4 SIDE YARD**

See Performance Standards.

## **ARTICLE XIV**

### **Section 5 REAR YARD**

There shall be provided a rear yard of not less than thirty (30) feet in depth, unless abutting a railroad rightofway, in which case the building shall be permitted within five (5) feet of said rightofway.

## **ARTICE XIV**

### **Section 6 RESIDENTIAL SETBACKS**

No building or structure shall be closer to a dwelling than one hundred (100) feet.

## **ARTICLE XIV**

### **Section 7 MINIMUM FLOOR AREA**

There shall be no minimum floor area requirements.

## **ARTICLE XIV**

### **Section 8 PERFORMANCE STANDARDS**

#### **A GENERAL**

No permit shall be issued for the erection, relocation, or expansion of any industrial use or building unless the same complies with the performance standards set forth herein.

#### **B STORAGE**



All materials or products shall be kept within completely enclosed buildings or screened by a solid wall, fence, evergreens, hedge or trees of minimum height of six (6) feet. In the IL Zone only, storage of materials shall not exceed twenty-five (25) percent of the total gross area of enclosed structures.

#### C SETBACKS

No part of any structure (excluding an eave or cornice overhang not to exceed four (4) feet, or a canopy at an entrance) shall be built not closer than one hundred and twenty (120) feet to an Interstate Highway; one hundred (100) feet to a major state or county highway; eighty-five (85) feet to a secondary highway; and sixty-five (65) feet to any other street or highway.

Where a front yard is located across a street and opposite to a dwelling or to a Residence Zone, a front yard of one hundred (100) feet shall be provided. Where a side yard abuts a dwelling or Business Zone, a side yard of fifty (50) feet shall be provided.

#### D SCREENING

Where a front or rear yard abuts a dwelling or Business Zone, a masonry wall, fence or compact hedge or row of shrubbery or evergreen trees shall be provided along or within twenty (20) feet of the zone lot line. Such screening shall be not less than six (6) feet in height.

#### E HEIGHT

Along any front, side or rear yard adjacent to a Residence or Business Zone, the maximum vertical height shall be twentyfive (25) feet. For each foot of height in excess of twentyfive (25) feet, one (1) additional foot shall be provided.

#### F EMISSION

The emission of smoke, particulate matter and noxious and toxic gases shall be subject to the regulations of the State of Indiana Board of Health and/or any and all air pollution control laws, ordinances or statutes passed before and after the enactment of this Ordinance. The storage, utilization or manufacture of products or materials shall conform with the standards prescribed by the National Fire Protection Association. Such storage, utilization or manufacturing shall not produce a hazard or endanger the public health, safety and welfare of the people of the County of Delaware, Indiana.

#### G DISCHARGE

No use shall accumulate or discharge any waste matter, whether liquid or solid, in violation of applicable standards set forth by the State of Indiana Board of Health, the Stream Pollution Control Board of the State of Indiana or any pertinent local governmental agency. The Stream Pollution Control Board shall approve sewage disposal plans and industrial waste treatment.

## H SOUND

No use shall produce sound in such manner as to endanger the public health, safety and welfare of the people of the County of Delaware, Indiana. Sound shall be muffled so as not to become detrimental or a nuisance due to pressure, amount, intermittence, beat, frequency, shrillness or vibration.

## I GLARE AND HEAT

Any use established after the enactment of this Ordinance shall be operated so as to comply with performance standards governing glare and heat as set forth by the State of Indiana.

## J FIRE AND EXPLOSIVES

Storage, utilization or manufacture of products and materials shall conform to the standards prescribed by the National Fire Protection Association.

## K RADIATION

Any use shall conform to the Atomic Energy Commission standards for protection against radiation. Also, the electromagnetic standards of the Federal Communications Commission shall be complied with.

# ARTICLE XV FLOOD AREA ZONE

## ARTICLE XV

### Section 1 GENERAL

Certain areas in the Town of Daleville, Indiana, under existing conditions, are unsuitable for permanent occupancy being subject to periodic inundation. The purpose of the FA Flood Area Zone is to safeguard human life and property from the dangers of flood and avoid the losses both in life and wealth, which may occur.

## ARTICLE XV

### Section 2 BOUNDARIES

The boundaries of the FA Flood Area Zone have been determined from data obtained from the Federal Emergency Management Agency. Such boundaries run along the sides of the White River and Mississinewa River as they traverse through the County of Delaware, Indiana, and include the floodway and A Zone areas as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Delaware County, Indiana and Incorporated Areas dated July 4, 2011 and the corresponding Flood Insurance Map dated July 4, 2011 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, and

described in the Floodplain Management Ordinance for Delaware County, Indiana.

## **ARTICLE XV**

### **Section 3 PERMITTED USES**

No building, structure or land shall be used and no building or structure shall hereafter be erected, enlarged or maintained except for the following uses:

1. Parks, playgrounds, boat houses, golf courses, landings, docks and related uses.
2. Wildlife sanctuaries operated by governmental units or nonprofit organizations; woodland preserves.
3. Farming, truck and nursery gardening.
4. Pasture; grazing.
5. Forestry, reforestation, excluding storage and mill structures.
6. Hunting, fishing.
7. Outlet installations for sewage treatment plants, sealed public water supply wells, utility transmission lines.
8. Loading areas, parking areas, airport landing strips.
9. Circus, carnival, roadside stands, outdoor advertising as defined in this Ordinance.
10. Drivein theaters.

## **ARTICLE XV**

### **Section 4 CONDITIONAL USES**

A The following uses may be permitted subject to approval by the Daleville Board of Zoning Appeals:

1. Storage of equipment, machinery and materials.
2. Extraction of sand and gravel.
3. Kennels and stables.

### **B PROCEDURE**

Upon receiving an application for a conditional use in the FA Flood Area Zone the Board of Zoning Appeals shall, prior to rendering a decision, require the applicant to furnish plans to include topography, storage elevations, size and location of proposed and existing structures on site, land uses, soil types and other pertinent data.

The Board shall transmit copy of the application to the Corps of Engineers of the Department of the Army for recommendations. In making a decision on conditional uses the Board shall consider:

1. That all material or equipment shall be anchored.
2. That encroachments will not create dangers to life and property.
3. That there shall be no pollution of stream waters.
4. That there is proper access to the property in times of flood for emergency vehicles.
5. That the natural course of the stream is not being changed.
6. That no structure shall be located closer to the edge of a stream than one hundred and fifty (150) feet.

## **ARTICLE XV**

### **Section 5 PROHIBITED USES**

The following uses shall be totally prohibited in the FA Flood Area Zone:

1. Residences.
2. Dumps; landfills.
3. Removal of top soil.
4. Junk yards, outdoor storage of vehicles.
5. On site sewage disposal systems.

## **ARTICLE XVI PERFORMANCE STANDARDS**

## **ARTICLE XVI**

### **Section 1 PARKING AND LOADING**

#### **A PURPOSE**

In order to reduce congestion in public streets and highways and to provide increased safety for the

general public, every use of land shall be suited with onsite parking, loading and unloading facilities as required in this section.

## B DEFINITION

For the purpose of this Ordinance, a parking space for one vehicle shall consist of not less than one hundred and sixty-two (162) square feet of area, exclusive of drives, aisles and other necessary means of access, with free access from a public way. Each required parking space shall be designed so that any motor vehicle may proceed to and from said space without requiring the moving of any other vehicle or by passing over any other parking space, except where the parking area is limited to employees.

## C STANDARDS

No new building or structure shall be constructed or used in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used unless off-street parking is provided in accordance with the following conditions:

1. Off-street parking facilities shall be opaquely screened from any Residence Zone, or any one or two family dwelling, with a suitable buffer or fence not less than four (4) feet in height.
2. All land used for off-street parking, and all driveways thereto, shall be paved or surfaced, for the duration of its use, in accordance with the most recent specifications of the town engineer to avoid nuisances of dust and erosion and shall be drained in a manner which shall meet the minimum required in such specifications.
3. Any light used to illuminate land used for off-street parking or driveways thereto shall be installed and maintained so as to reflect the light away from any Residence Zone and any one or two family dwelling.
4. Whenever the intensity of use of any building, structure or land shall be increased through the addition of dwelling units, floor area, beds, seating capacity or other unit of measurement, parking and loading facilities as required in the Section shall be provided, but only to the extent of such increase.
5. All off-street parking and loading facilities shall be designed with appropriate means of vehicular accesses to a public street or alley in a manner, which will least, interfere with traffic movement. No off-street parking space shall be designed to require backing of a vehicle into a public street.
6. Handicapped spaces shall be provided in accordance with all applicable local, state and federal law.

Table C-6

### ADA Standards for Minimum Number of Accessible Parking Spaces

Total # of Parking Spaces Provided	Minimum # of Required Accessible Parking Spaces	Minimum # of Accessible Van Parking Spaces
1 to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1
201 to 300	7	2
301 to 400	8	2
401 to 500	9	2
501 to 1000	2% of total	1 for each 6 accessible parking spaces,
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	or fraction thereof

*The following types of facilities have different requirements for the number of accessible parking spaces.*

**\* Outpatient Hospital Facilities -**

10% of patient and visitor parking spaces must be accessible.

**\* Rehabilitation & Outpatient Physical Therapy Facilities -**

20% of patient and visitor parking spaces must be accessible.

**\* Residential Facilities -**

> At least 1 accessible parking space for each accessible residential dwelling.

> 2%, but no fewer than 1 space not covered by the term above shall be accessible.

> In areas where parking spaces are provided for persons other than residents, parking shall be provided in accordance with the table above.

7. Parking spaces and maneuvering aisles shall have the minimum dimensions set forth in the following table. The parking angle shall be measured between the centerline of the parking space and the centerline of the aisle.

### MINIMUM PARKING SPACE AND AISLE DIMENSIONS FOR PARKING AREAS

Angle of Parking Maneuvering	Width of Parking Maneuvering Space		Length of Parking Space
	Aisle 1-Way	Aisle 2-Way	
76-90°	22'	9'	18'
61-75°	18'	9'	18'
46-60°	17'	9'	18'
0-45°		22'	22'

12'

22'

8. For parking areas containing twenty (20) or more spaces, up to fifteen percent (15%) of the required parking spaces may be land banked as green space at the discretion of the owner/developer.
9. Off-street parking areas may be located in any front, side or rear yard area provided the following green belts are maintained: 10' along any public roadway measured from the property line; and 5' along any side and/or rear property line adjacent to or abutting a residence zone.

No off-street parking area shall extend into any proposed right-of-way as set forth in the Official Thoroughfare Plan. Whenever any green belt and/or landscaped area, provided to meet the requirements of this Ordinance, is removed by a public road widening project, the property from which the green belt or landscaped area has been removed shall still be considered in compliance with this Ordinance.

10. Bicycle parking spaces shall be provided in accordance with the requirements set forth as follows:

- a. Location and Placement Standards:

- 1) Bicycle parking shall be located as close or closer than the nearest car parking space to the building entrance, other than those spaces for persons with disabilities.
- 2) Bicycle parking facilities shall not interfere with accessible paths of travel or accessible parking as required by the American with Disabilities Act of 1990.
- 3) Bicycle racks shall not block the building entrance or inhibit pedestrian flow.
- 4) Bicycle racks shall be located to protect bicycles from damage from automobiles.
- 5) Bicycle parking shall be visible, well lit, and as convenient to cyclists as auto parking is to drivers.
- 6) All bicycle racks shall be designed to minimize visual clutter and be maintained in good condition.
- 7) All bicycle racks shall be securely anchored to the ground or building surface.
- 8) In cases where bicycle parking spaces are not visible from the primary street, signage shall be used to direct cyclists safely to bicycle parking areas.

- b. Design Standards:

- 1) Each bicycle rack shall be designed to accommodate a minimum of two bicycle parking

spaces.

- 2) Bicycle racks shall be designed to accommodate U-shaped locking devices and support the bicycle in two places.
  - 3) Bicycle racks shall be designed to resist cutting, rusting, bending and deformation.
  - 4) The surfacing of such facilities shall be designed and maintained to be mud and snow free.
  - 5) Required bicycle parking spaces shall be at least 4 feet wide by 6 feet long.
  - 6) An access aisle of at least 4 feet shall be provided in each bicycle parking facility.
  - 7) Such space shall have a vertical clearance of at least 6 feet.
  - 8) Bicycle racks shall be placed on 48-inch centers.
- c. When the intensity of use of any building, structure or premises shall be increased through additional number of dwelling units, gross floor area, seating capacity or other units of measurement specified herein that requires additional automobile parking spaces, bicycle parking as required herein shall be provided for such increase in intensity of use.
  - d. A reduction in the minimum required automobile parking is allowed equal to the percentage of bicycle parking spaces provided, with a 5% maximum reduction.
  - e. Bicycle parking spaces shall be based on the required automobile parking spaces and shall be provided in accordance with the following:

#### D OFFSTREET LOADING AND UNLOADING

There shall be provided and maintained space for vehicles standing, loading and unloading on the same premises with every building, structure or part thereof hereafter erected, established or enlarged and occupied by manufacturing, storage, warehouse, goods display, retail store, wholesale store, market, hotel, laundry, dry cleaning, and uses involving the receipt and distribution by vehicles of material or merchandise as follows:

A twelve (12) foot by thirty-five (35) foot loading space with fourteen (14) foot height clearance for every twenty thousand (20,000) square feet or fraction thereof of floor area in excess of six thousand (6,000) square feet of floor area used for the above mentioned purposes, or for every twenty thousand (20,000) square feet or fraction thereof of land used. This requirement shall be separate and apart from any and all other off-street parking requirements.

#### E OFFSTREET PARKING



The following off-street parking requirements shall be provided and maintained in conformity with the provisions of this Ordinance:

1. Airport: One (1) parking space for every two (2) employees plus one (1) parking space for every four (4) seats
2. Apparel Shop: One (1) parking space for each three hundred three square feet of gross floor area (3.3/1000 GFA)
3. Apartments: Two (2) parking spaces for each dwelling unit
4. Apartment Hotel: One (1) parking space for each sleeping room
5. Auditorium: One (1) parking space for each four (4) seats based on the maximum seating capacity, including fixed and movable seats
6. Auto Sales: One (1) parking space for each one thousand (1,000) square feet used for retailing
7. Auto Sales/Repair: One (1) parking space for each four hundred square feet of gross floor (indoor) gross floor area (2.5/1000 GFA) plus two and one half (2.5) spaces for each one thousand square feet of external display area plus three (3) spaces for each service bay.
8. Bakery: One (1) parking space for each three hundred three square feet of gross floor area (3.3/1000 GFA)
9. Bank: One (1) parking space for each four hundred (400) square feet of floor area
10. Barber Shop: Two (2) parking spaces for each treatment station, but not less than four (4) spaces for each one thousand square feet of gross floor area (4/1000 GFA)
11. Beauty Parlor: Two (2) parking spaces for each treatment station, but not less than four (4) spaces for each one thousand square feet of gross floor area (4/1000 GFA)
12. Billiard Room: Parking spaces equal in number to thirty percent of the capacity of persons
13. Bowling Alley: Three (3) parking spaces for each lane, plus one (1) parking space for every six (6) spectator seats

14. Boarding House:	One (1) parking space for each sleeping room.
15. Bus Station:	One (1) parking space for each ten (10) seats in waiting room, plus one (1) parking space for each two (2) employees of connected retail use
16. Cemetery:	One (1) parking space for each two (2) employees
17. Clinic:	One (1) parking space for each two (2) employees plus three (3) parking spaces for each doctor
18. Church:	One (1) parking space for each six (6) seats in main auditorium
19. Club House:	One (1) parking space for each two (2) sleeping rooms
20. Cold Storage:	One (1) parking space for each four hundred square feet of gross floor area (2.5/1000 GFA)
21. Community Center:	Parking spaces equal in number to thirty percent of the Center capacity of persons
22. Country Club:	One (1) parking space for each two (2) employees plus three (3) parking spaces for each golf hole
23. Convalescent or Nursing Home:	One (1) parking space for each eight (8) beds, plus one (1) parking space for each two (2) employees
24. Dancing Academy:	One (1) parking space for each two hundred fifty square feet of gross floor area (4/1000 GFA)
25. Department Store:	One (1) parking space for each three hundred three square feet of gross floor area (3.3/1000 GFA)
26. Delicatessen:	One (1) parking space for each three hundred three square feet of gross floor area (3.3/1000 GFA)
27. Dormitory:	One (1) parking space for each two (2) sleeping rooms
28. Dormitory (Student):	One (1) parking space for each three (3) dormitory (Student) residents plus one (1) parking space for the supervisor.
29. Dressmaking:	One (1) parking space for each four hundred seventeen square feet of gross floor area (2.4/1000 GFA)
30. Dry Cleaning:	One (1) parking space for each four hundred seventeen square feet of gross floor area (2.4/1000 GFA)

31. Drugstore: One (1) parking space for each two hundred fifty square feet of gross floor area (4/1000 GFA)
32. Dwelling: Two (2) parking spaces for each dwelling unit
33. Dwelling Two-family: Two (2) parking spaces for dwelling each dwelling unit
34. Dwelling with Roomers: Two (2) parking spaces for each dwelling unit plus one (1) parking space for each room rented to persons not members of the resident family
35. Fire Stations: One (1) parking space for each three (3) employees on shift
36. Flower Shop: One (1) parking space for each three hundred three square feet of gross floor area (3.3/1000 GFA)
37. Fraternity: One (1) parking space for each three (3) active members or dormitory residents plus one (1) parking space for each two (2) employees other than residents
38. Funeral Home: One (1) parking space for each four hundred (400) square feet of gross floor area
39. Furniture Store: One (1) parking space for each one thousand (1,000) square feet of gross ground floor area plus one (1) parking space for each one thousand five hundred (1,500) square feet of the gross area of floors other than the ground floor used for sales, display or show purposes
40. Food Market <3500: One (1) parking space for each three hundred GFA thirty-three square <3,500 sq. ft. of GFA feet of gross floor area (3/1000 GFA)
41. Food Market >3500: One (1) parking space for each two hundred fifty GFA square feet of gross >3,500 sq. ft. of GFA floor area (4/1000 GFA)
42. Greenhouse: One (1) parking space for each three (3) employees plus one (1) space for each three-hundred thirty-three square feet of sales area (3/1000 sq. ft. of sales area)
43. Grain Elevator: One (1) parking space for each two (2) employees
44. Gymnasium: Parking spaces equal in number to thirty percent of the capacity of persons
45. Hospital: One (1) parking space for each two and one-half employees plus one

- (1)space for each five average daily outpatient visits plus one (1) space for each four staff members plus one (1) space for each three beds.
46. Home Occupation: One (1) parking space in addition to residence requirements.
47. Hotel: One (1) parking space for each three employees plus one (1) space for each sleeping room
48. Industrial Park: One (1) parking space for each two (2) employees on the largest shift
49. Industrial Uses: One (1) parking space for each three (3) employees
50. Junk Yard: One (1) parking space for each two (2) employees
51. Kindergarten: One (1) parking space for each two (2) employees plus one (1) parking space for each five (5) children enrolled
52. Laboratory: One (1) parking space for each two (2) employees
53. Laundry: One (1) parking space for two washer and dryer machines
54. Lodge: Parking spaces equal in number to thirty percent of the capacity of persons
55. Library: One (1) parking space for each three hundred thirtythree square feet of gross floor area (3/1000 GFA)
56. Microbrewery/Microdistillery  
One (1) parking space for each employee on the largest production shift plus the following based on area of use:
- One (1) parking space for each two hundred (200) square feet of floor area dedicated to serving the public (for tasting room); and/or
  - Parking spaced equal in number to thirty (30) percent of the capacity of persons for the area dedicated to bar/tavern use (when in conjunction with bar/tavern); and/or
  - One (1) parking space for each one hundred (100) square feet of floor area dedicated to the restaurant use (when in conjunction with a restaurant)
57. Mobile Home Park: One (1) parking space for each two (2) employees plus two (2) parking spaces for each mobile home
58. Motel: One (1) parking space for each sleeping room plus one (1) space for

	each two employees
59. Museum:	Parking spaces equal in number to thirty percent of the capacity of persons
60. Night Club:	Parking spaces equal in number to thirty percent of the capacity of persons
61. Nursery (day):	One (1) parking space for each two (2) employees, plus one (1) parking space for each five (5) children enrolled
62. Office-Business:	One (1) parking space for each three hundred three square feet of gross floor area (3.3/1000 GFA)
63. OfficeProfessional:	One (1) parking space for each three hundred three square feet of gross floor area (3.3/1000 GFA)
64. Outdoor Business-Recreation Use:	One (1) parking space for each three employees plus one (1) space for each thousand square feet of use area
65. Penal Institution:	One (1) parking space for each three (3) employees plus one (1) parking space for each ten (10) inmates
66. Photo Studio:	One (1) parking space for each four hundred seventeen square feet of gross floor area (2.4/1000 GFA)
67. Physician's Office:	One (1) parking space for each employee and ten (10) additional spaces per physician
68. Police Station:	One (1) parking space for each three (3) employees on shift
69. Public Utility:	One (1) parking space for each two (2) employees, plus spaces adequate in number (as determined by the Delaware-Muncie Metropolitan Plan Commission) to serve the visiting public
70. Radio Station:	One (1) parking space for each employee in the largest shift
71. Railway Station:	One (1) parking space for each ten (10) seats in waiting room, plus one (1) parking space for each two (2) employees of connected retail use
72. Recreational Club:	One (1) parking space for each three (3) rooming units, plus parking spaces equal in number to thirty (30) percent of the capacity of persons of such club

73. Restaurant: One (1) parking space for each sixty-two and one-half square feet of gross floor area (16/1000 GFA)
74. Riding Stable: One (1) parking space for each five thousand (5,000) square feet of lot area
75. School: One (1) parking space for each member of the staff, plus one (1) parking space for each six (6) auditorium seats
76. School, nursery: One (1) parking space for each two (2) employees
77. School, high: One (1) parking space for each two (2) faculty members and other full time employees, plus one (1) parking space for each ten (10) students based on the maximum number of students attending classes on the premises at any one time during any twenty-four (24) hour period
78. Shoe Repair: One (1) parking space for each four hundred seventeen square feet of gross floor area (2.4/1000 GFA)
79. Shopping Center: One (1) parking space for each two hundred square feet of gross floor area (5/1000 GFA)
80. Slaughterhouse: One (1) parking space for each two (2) employees
81. Sorority: One (1) parking space for each three (3) active members or, dormitory residents, plus one (1) parking space for manager, plus one (1) parking space for each two (2) full time employees other than students
82. Sanitarium: One (1) parking space for each six (6) patient beds, plus one (1) parking space for each staff or visiting doctor, plus one (1) parking space for each four (4) employees including nurses
83. Tavern: Parking spaces equal in number to thirty (30) percent of the capacity of persons
84. Theater: One (1) parking space for each six (6) seats up to four hundred (400) seats, plus one (1) parking space for each four (4) seats above four hundred (400)
85. Theater Outdoor: One (1) parking space for each two (2) employees, plus one (1) parking space for manager
86. Tourist Home: One (1) parking space for each two (2) employees, plus one (1)

parking space for each sleeping accommodation

87. Truck: One (1) parking space for each two (2) employees, plus four (4) parking spaces for customers
88. Veterinarian: Two (2) parking spaces for each three (3) animal cages or pens
89. Video Store: One (1) parking space for each two hundred fifty square feet of gross floor area (4/1000 GFA)
90. Warehouse: One (1) parking space for each two employees

For uses not listed, the most similar category shall be used as determined by the Administrative Zoning Officer. The following standards and categories shall be used for retail:

General Retail	3.3 spaces per 1000 GFA
Convenience Retail	4 spaces per 1000 GFA
Service Retail	2.4 spaces per 1000 GFA
Temporary Retail	3.3 spaces per 1000 GFA

## F SPECIAL CONDITIONS

A church may, by agreement approved by the Administrative Zoning Officer and filed with the Planning and Zoning Commission, use adjoining parking facilities when the same are not in use, instead of providing its own. A group of business or industrial uses may provide a joint parking area if the number of spaces in the area equals or exceeds the aggregate of the spaces required for the several uses. Where there may be more than one use in the same building or structure, the total offstreet parking requirement shall be the sum of the requirements specified herein for each of the various uses.

## ARTICLE XVI

### Section 2 SIGNS AND OUTDOOR ADVERTISING

#### A PURPOSE

1. The purpose of this section is to promote and protect the public health, welfare, and safety of the community and its people by regulating existing and proposed outdoor advertising and outdoor signs of all types.

This section is also intended to protect property values; create a more attractive and economically vital business climate; enhance and protect the physical appearance of the community; preserve the scenic and natural beauty; and to provide more enjoyable and pleasant living conditions. The intent of this section is also to reduce the incidence of signs or advertising distractions that may contribute to traffic accidents by their placement.

#### B GENERAL PROVISIONS

1. Definition: Hereafter a general definition of a sign shall mean identification description, illustration, or device which is mobile, affixed to or erected upon a property or tract of land, a building or a structure, and which directs attention to a product, place, activity, service, institution or business. All supports, poles, wires and other sign apparatus shall be defined as part of a sign, and hereafter referred to as sign apparatus.
2. Existing Signs Conforming:
  - a. Definition: A conforming sign is a sign, which meets the provisions established in this Ordinance.
  - b. Provisions: The lawful location and maintenance of conforming signs existing at the time of the enactment of this Ordinance and any amendments thereof may be continued provided that the following conditions are met:
    - 1) That the existing sign is not expanded or reduced in size, or relocated in such a manner that would make said existing sign unlawful,
    - 2) That no additional signs are placed on the same sign apparatus, upon which said existing sign is located, in such a manner that would make said existing sign or sign apparatus unlawful, and
    - 3) That an approved sign permit was obtained for said existing sign.

When changes to an existing conforming sign are necessary, no said existing sign shall be expanded or reduced in size, or relocated without first obtaining an approved sign permit from the Administrative Zoning Officer.

3. Existing Signs NonConforming
  - a. Definition: A nonconforming sign is a sign which does not meet the provisions established in this Ordinance.
  - b. Provisions: The lawful use of a nonconforming sign, existing at the time of the enactment of this Ordinance and any amendments thereof, may be continued provided that the following conditions are met:
    - 1) That said existing sign is not expanded in size, or relocated, unless such expansion or relocation brings the sign into conformity with this Ordinance;
    - 2) That no additional signs are placed on the same sign apparatus upon which said existing sign is located; and
    - 3) That said existing sign is not located within the proposed or existing right-of-ways as



designated by the Official Thoroughfare Plan of Delaware County, Indiana.

When changes to an existing nonconforming sign are necessary to bring the sign into conformity, no said existing sign shall be expanded in size, or relocated, without first obtaining an approved sign permit from the Administrative Zoning Officer.

4. Existing Signs Deteriorated or Inactive:

- a. Deteriorated Sign: A sign that is in a poor or dangerous condition, such as, but not limited to, broken or leaning sign apparatus, portions of the sign missing, chipping of paint, ripping or tearing of sign materials. When a sign has been deteriorated for a period of at least thirty (30) days, the owner of the sign or the owner of the property upon which said sign is located shall, upon written notice from the Administrative Zoning Officer, repair said sign. The sign shall be repaired, or contracted for repair, within thirty (30) days from the date of the notice sent to repair the sign.
- b. Inactive Sign: A sign which no longer directs attention to a business, activity, service or product, sold or provided on the premises where the sign is located. A pole or other support apparatus without a sign board shall also be considered an inactive sign. When a sign and/or sign support apparatus has been inactive for a period of at least six (6) months, the owner of the sign or the owner of the property upon which said sign is located shall, upon written notice from the Administrative Zoning Officer, remove the sign and sign support apparatus. The sign and support apparatus shall be removed within thirty (30) days from the date of the notice. Failure to comply with the notice shall authorize said Officer to initiate action for the removal of the deteriorated or inactive sign.

5. Liability Insurance:

Any sign installing company which applies for a sign permit must have on file with the Building Commissioner's Office, a current Certificate of Liability Insurance, covering bodily injuries, including death, with limits of not less than \$100,000 for each person and \$300,000 for each accident and \$25,000 in property damage which said liability policy shall carry an endorsement holding the Town of Daleville harmless from any claims, demands, or causes of action resulting from, in any manner, the erection or installation of said sign by said sign installation company.

6. Multiple Frontages: Each side of a building or structure is to be considered separately for purposes of determining compliance with the provisions of this Ordinance.
7. Multiple Uses of a Sign Apparatus: When more than one sign is to be located, added to, or placed on the same sign apparatus as where previously erected signs exist, all signs, existing and proposed, must meet the provisions of this Ordinance, prior to the issuance of any additional sign permits.

8. Overall Height: Notwithstanding the provisions of the Ordinance, no sign shall at any point be over sixty (60) feet in height above grade level.
9. Right-of-Ways: Notwithstanding the provisions of this Ordinance, no sign shall be located or maintained within the proposed or existing right-of-way of any street or highway, as designated by the Official Thoroughfare Plan of Delaware County, Indiana. Exceptions to this requirement include a projecting sign, which may be located over public property, but shall not extend nearer to the curb line than five (5) feet.
10. Setback from Residence in a Residential Zone: Notwithstanding the provisions of this Ordinance, no sign, excepting directional and warning signs, shall be located closer than fifty (50) feet to a residence in a residential zone, a school or a church.
11. Total Number of on Premise Signs per Property: The total number of on premise signs for a property having a commercial or industrial use located thereon shall be based on the following formula: Two (2) on premise signs per street frontage. However, where there are multiple uses on a single property, each occupant thereon is permitted a maximum of two (2) on premise signs.

C PERMITTED SIGNS NOT REQUIRING A SIGN PERMIT - ALLOWABLE IN ALL ZONING DISTRICTS

1. Directional or Warning Sign.
  2. Political Sign.
  3. Public Service Sign.
  4. Real Estate Sign.
  5. Real Estate Development Sign.
1. Directional or Warning Sign:
    - a. Definition: Signs solely identifying situations of a directional, cautionary, or dangerous nature when public signs are not functional, such as, but not limited to, an entrance or exit sign.
    - b. Provisions: If illuminated, the light source shall not be directed toward any street or any adjoining property in a residence zone. Signs identifying ingress and egress points of a property shall be placed in such a manner as not to interfere with the visibility of motorists or pedestrians.
  2. Political Sign:

- a. Definition: A sign relating to the election of a person to public office, to a political party or group, or to a matter to be voted upon at an election called by a public body.
- b. Provisions: A political sign shall be removed within ten (10) days following the election. A winning candidate in a primary election may maintain his/her sign until ten (10) days following the general election. The person responsible for the removal of a political sign is the owner of the property upon which said political sign is located. If such signs are not removed within the specified time period, the Administrative Zoning Officer may initiate action for removal of said sign.

### 3. Public Service Sign:

- a. Definition: A sign required or specifically authorized for a public purpose.
- b. Provisions: A public service sign can be any especially licensed sign, permitted by a legislative body, by franchise or by special license such as a sign on a bus, bench or trash receptacle. A public service sign may be a sign established by a public service agency as an aid to safety or service. A public service sign can also be a governmental or traffic sign.

### 4. Real Estate Sign:

- a. Definition: A clearly temporary sign, pertaining only to the sale, lease or rental of the premises upon which it is displayed.
- b. Provisions: A real estate sign shall not be illuminated and it shall be removed within ten (10) days after the sale, lease or rental of the property or premises.

### 5. Real Estate Development Sign:

- a. Definition: A business sign placed on the premises of a subdivision or other real estate development.
- b. Provisions: In the case of a real estate development sign, no sign shall be closer to an existing building than one hundred (100) feet. In a development of less than one (1) acre, or having a frontage under four hundred (400) feet on the street on which the sign is to be placed, the minimum distance to a residence in a residential zoning district, which is not part of the development shall be at least fifty (50) feet. The maximum time for an individual sign to remain on the premises shall be twelve (12) successive months. Signs shall be removed when the development is completed or if the same would cease.

## D PERMITTED SIGNS REQUIRING A SIGN PERMIT - ALLOWABLE IN ALL ZONING DISTRICTS

### 1. Home Occupation Sign:

- a. Definition: A sign stating solely the name of a person and the name of the permitted home occupation.
- b. Provisions: A home occupation sign shall be permitted only when the property has obtained a special use home occupation approval from the Board of Zoning Appeals. The maximum size shall be one (1) square foot and it shall be placed flat against the residential structure. A home occupation sign shall not be illuminated in any manner.

A sign permit shall be obtained prior to placement of a home occupation sign.

## 2. Identification Sign:

- a. Definition: An identification sign shall mean a ground or wall sign stating the name of a person, firm or description of a permitted use.
- b. Provisions: Signs may be used by professional, semiprofessional, public, semipublic, religious and similar entities. One (1) sign shall be permitted for each site or building entrance. If illuminated, the light source shall not be directly visible from any street or adjoining property in a Residence Zone. A sign permit shall be obtained prior to placement of an identification sign.

## E PERMITTED SIGNS REQUIRING A SIGN PERMIT - ALLOWABLE IN NON-RESIDENTIAL ZONING DISTRICTS

- |                    |                       |
|--------------------|-----------------------|
| 1. Ground Sign     | 5. Roof Sign          |
| 2. OffPremise Sign | 6. Temporary Sign     |
| 3. Pole Sign       | 7. Wall Sign          |
| 4. Projecting Sign | 8. Clustered Use Sign |

### 1. Ground Sign:

- a. Definition: A low profile, on-premise sign completely or principally self-supported by posts or other sign apparatus independent of any building or other structure.
- b. Provisions: A ground sign shall not at any point be over three (3) feet in height above grade level when such sign is located within five (5) feet of the rightofway line. When located five (5) or more feet from the right-of-way line, no ground sign shall at any point be over eight (8) feet in height above ground level. A ground sign shall not be closer than three (3) feet to any building, or ten (10) feet to any other sign. Lighting reflectors shall not be more than six (6) feet away from the ground sign, which they are designed to illuminate. A sign permit shall be obtained prior to the placement of a ground sign.

## 2. OffPremise Sign:

- a. Definition: A sign which directs attention to a use, business, product, service, or activity not conducted, sold or offered upon the premises where the sign is located.
- b. 1) ProvisionsGeneral: Offpremise signs shall have a six (6) foot clearance beneath the signboard including cutouts. The overall size of a sign shall not exceed twentyfive (25) feet in height, fortyeight (48) feet in length, or six hundred seventytwo (672) feet in area. Extensions allowed shall not exceed two hundred (200) square feet in area.

Maximum extensions of cutouts shall be:

Above the signboard six (6) feet, below the signboard one (1) foot and any sides of the sign board three (3) feet. An off-premise sign may have the faces of the sign board as follows: One (1) board facing one direction; two (2) boards in a "V" position with an interior angle of not more than ninety degrees (90 ); three (3) boards in a triangular position; two (2) boards back to back; two (2) boards side by side or one above the other four (4) boards; or two (2) boards side by side coupled back to back. When two (2) boards face the same direction, the total allowable sign area shall not exceed the area allowed for one (1) billboard. Total allowable area is counted only for one (1) side when the boards face different directions and the angle between the sign faces is two hundred seventy (270) degrees or more. An offpremise sign shall be permitted within existing building lines. A sign permit shall be obtained prior to the placement of an offpremise sign.

- (2) Special Provisions NonResidential Zoning Districts: A minimum distance to another legally established offpremise sign shall be two hundred (200) feet between signs on the same side of any street or highway. An offpremise sign shall not be placed closer than ten (10) feet to any rightofway line of any street or highway. The maximum area of all offpremise signs, including cutouts or extensions, on the same side of the street facing the same direction in any block shall be twentyfive hundred (2,500) square feet. Should a block exceed six hundred (600) feet in length, each six hundred (600) feet shall be considered a block. There shall be a minimum distance of not less than fifty (50) feet to any residence in a Residential Zoning District.

## 3. Pole Sign:

- a. Definition: A highprofile, onpremise sign completely or principally selfsupported by posts or other sign apparatus independent of any building or other structure.
- b. Provisions: A pole sign shall have a minimum clearance of ten (10) feet between the

bottom of the face of the sign and grade or sidewalk level. If the pole sign is supported by more than one pole, the space between the poles shall not be enclosed in a manner, which would impair general public visibility. The maximum width of pole covers shall be the sum total of eighteen (18) inches in a horizontal direction, plus the width of the pole covered. No pole sign shall be erected in excess of sixty (60) feet in vertical height or three hundred (300) square feet in area per side. All bolted installation to concrete bases must have ground rods. Once a pole sign becomes inactive, as defined in this Ordinance, the pole or sign apparatus must be removed along with the sign itself. A sign permit shall be obtained prior to the placement of a pole sign.

#### 4. Projecting Sign:

a. Definition: An onpremise sign attached to a building or structure and extending wholly or partly beyond the surface of the portion of the building or structure to which it is attached; or extending beyond the building line; or over public property.

b. Provisions: A projecting sign shall be placed at a distance not greater than two (2) feet from the face of the wall to which it is attached, measured from the part of the sign nearest thereto. No projecting sign or part thereof shall extend nearer to the curb line than five (5) feet, nor be placed lower than ten (10) feet above grade or sidewalk level. No projecting sign shall be erected to a height greater than sixty (60) feet above grade or higher than the cornice of any building which is three (3) stories or more in height, unless the same be entirely of steel skeleton construction and shall present only forty percent (40%) of the solid surface area to be affected by wind pressure. No projecting sign shall be erected when the area of one face of the sign shall exceed two hundred forty (240) square feet in area. Any movable part of the sign shall have an area not to exceed one hundred (100) square feet for a vertical sign, or fifty (50) square feet for a horizontal sign.

No projecting sign shall be secured with wood, nails or wire, unless with seven strand guy wire; nor shall any projecting sign be hung or secured to any other sign. Turnbuckles shall be placed in all chains and guy wires supporting projecting sign weighing two hundred (200) pounds or more. A projecting sign exceeding ten (10) square feet in area or fifty (50) pounds in weight shall not be attached to nor supported by frame buildings, nor wooden framework of a building. Other projecting signs shall be attached to masonry or, like walls, with galvanized expansion bolts at least 3/8 inch in diameter or shall be fixed in the wall by means of bolts extending through the wall. Projecting signs shall have no reflectors of the gooseneck type. No glass faces can be used in projecting signs, any other glass used shall be safety or plate glass at least 1/4 inch in thickness. A sign permit shall be obtained prior to the placement of a projecting sign.

#### 5. Roof Sign:

a. Definition: An onpremise sign erected, constructed, or maintained upon the roof of any building or structure.

- b. Provisions: No roof sign shall project beyond the outer edge of the walls of the building in any direction. No roof sign having a tight, closed, or solid surface shall at any point be over twentyfive (25) feet above the roof level.

No roof sign with a tight, closed or solid surface shall be erected on any building four (4) stories or over in height, but roof sign structures not having a tight, closed or solid surface may be erected on fireresistive buildings to a height not exceeding forty (40) feet above the roof level, and upon nonfireresistive buildings to a height not exceeding thirty (30) feet above the roof level. The solid portions of the structures shall not exceed forty percent (40%) of the superficial area thereof. All signs which are erected on the roof of a fireresistive building shall be thoroughly secured to the building upon which they are installed, erected, or constructed, by iron or metal anchors, bolts, supports, seven strand guy cable, steel rods or braces. All roof signs erected on nonfireresistive buildings shall be so erected that the liveand deadload stresses shall not in any manner adversely affect the building. Wind pressures not less than said sign must withstand thirty (30) pounds to the square foot of the area of the sign. All roof signs shall be composed entirely of non- combustible material, including sign apparatus and supports, except the ornamental molding and battens behind the steel facings. A sign permit shall be obtained prior to the placement of a roof sign.

6. Temporary Sign:

- a. Definition: A temporary sign shall mean any on-premise sign, sign board, banner, pennant, flag banner, inflatable or other light weight advertising display, including portable signs, that are more than two (2) feet in height and/or more than three (3) square feet in display area, maintained for the purpose of displaying outdoor advertising, that directs attention to a product, place, activity, service, institution or business and that is intended to be displayed for a limited time as described herein. A portable sign means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported including, but not limited to, signs designed to be transported by mean s of wheels.
- b. Provisions: A sign permit shall be obtained prior to the placement of a temporary sign. No temporary sign shall be maintained, displayed or placed on a property for a period longer than forty-five (45) days after the issuance of the permit and ninety (90) days must expire before the permittee can reapply for a new permit for said sign on the property. A new permit is to be obtained for each forty-five (45) day period. A temporary sign exceeding the time limits herein may be converted to a permanent on-premise sign subject to obtaining the applicable permit and meeting all provisions governing the applicable sign type (i.e. ground sign, wall sign). There shall be no more than one (1) temporary sign per business. No temporary sign shall at any point be over eight (8) feet in height above grade, except a banner or other overhead suspended display provided it must have at least a ten (10) foot clearance above grade. No temporary sign shall be placed within public right-of-way; any temporary sign so improperly placed may be declared a public nuisance and a traffic hazard and, if necessary, the Administrative Zoning Officer shall remove the sign. Spotlights or flashing illumination shall not be used under any circumstances with a temporary sign.

Temporary signs shall be properly maintained and if not, may be declared a deteriorated sign subject to repair or removal as set forth in this Section. Any temporary sign not complying with the provisions of this Ordinance may, upon notice, be removed by the Administrative Zoning Officer.

- c. General Exceptions: Unless otherwise specifically stated, the following shall be exempt from the temporary sign provisions and permits:

1) A-Frame, T-Frame, Menu Board or Sandwich Board signs serving a permitted use provided as followed: they may be erected, placed or located outside of a business establishment on a daily bases; they shall only be displayed during business hours of operation; they shall be within ten (10) feet of the main customer entrance; they shall not be located in public right-of-way unless a Right-of-Way Occupancy Permit is obtained; they shall not exceed six (6) square feet in sign surface area; and they shall not exceed a height of five (5) feet above grade.

2) Holiday displays which contain no advertising message, are primarily decorative in nature and are clearly incidental and commonly associated with any national, state or local holiday provided the displays are removed in a timely manner after the holiday is over, such as within fifteen (15) days.

3) Grand Opening Events for new businesses shall be permitted a single grand opening event sign display during which the number, type and size of temporary signs shall not be limited provided the display does not exceed thirty (30) consecutive days measured before, during and after the grand opening event.

4) Flag banners and similar light with fixtures that contain no text, graphics, or logos provided there are no more than three (3) per business or land parcel containing multiple businesses and they are displayed no more than two (2) times per calendar year with each time not exceeding forty-five (45) days in duration.

## 7. Wall Sign:

- a. Definition: An on-premise sign attached to, or erected flatly against a wall of a building or structure.
- b. Provisions: No wall sign shall project away from the wall more than eighteen (18) inches. When a wall sign is located over a sidewalk and projects more than six (6) inches over the pedestrian area, the minimum distance from the sidewalk grade and the base of the sign shall be eight (8) feet.

A wall sign placed on a building of one (1) story shall not project more than ten (10) feet above the top of the wall or two (2) feet beyond the ends of the wall to which it is attached.



A wall sign placed on a building of two (2) or more stories shall not project more than two (2) feet above the top of the wall or beyond the ends of the wall to which it is attached.

If the wall sign is an illuminated one, overhead lighting reflectors may project six (6) feet beyond the building line, but in no case shall the lighting reflectors be more than six (6) feet from the face of the wall sign. All reflectors extending over the sidewalk shall be secured and safely anchored. No wall sign shall be so erected as to prevent free ingress to or egress from the building, or any fire escape. A sign permit shall be obtained prior to the placement of a wall sign.

## 8. Clustered Use Sign

- a. Definition: A sign that identifies by name two or more uses located in a single integrated commercial or industrial development or subdivision. Such signs are designed for identification and location purposes rather than advertising purposes.
- b. Provisions: Clustered use signs shall have a minimum clearance of ten (10) feet between the bottom of the face of the sign and grade or sidewalk level. If the clustered use sign is supported by more than one pole, the space between the poles shall not be enclosed in a manner that would impair general public visibility. No clustered use sign shall be erected in excess of forty-five (45) feet in height; and a clustered use sign shall not exceed three hundred (300) square feet in signboard area per side, excluding supports and the identification name for the development. All bolted installation to concrete bases must have ground rods. Signboards must be constructed of permanent, all-weather materials and supported internally by metal poles or supports. Signs shall be representative of the integrated area the sign is intended to serve and a design plan shall be submitted with the permit application. A landscaped area of at least 100 square feet shall be provided at the base of the sign and this area shall be maintained in a healthy, neat and clean condition. To minimize glare and the general over wash of light to public right-of-way and residential uses, signs shall be illuminated only with steady, stationary, shielded and/or contained light sources directed solely onto or within the sign. A sign permitted shall be obtained prior to the placement of a clustered use sign. After the initial installation, a sign permit shall be obtained prior to the installation of any additional or replacement signs for individual uses.
- c. Locations: One (1) clustered use sign may be erected at each major public right-of-way or private driveway entrance leading into an integrated commercial or industrial development or subdivision. The sign may be placed either on or off the property where the uses are located, but shall not be placed throughout the subdivision or development itself. No clustered use sign shall be erected within fifty (50) feet of another clustered use sign or pole sign. No clustered use sign shall be placed in the actual or proposed public right-of-way.

## F PROHIBITED SIGNS

1. Definition: A sign not permitted under any circumstances.

2. Provisions: The following signs shall be prohibited in all locations unless otherwise specified in this Ordinance:

## SIGNS AND OUTDOOR ADVERTISING

### Types of Signs:

- a. Bearing statements, words, or pictures of an obscene and indecent character, such as would be offensive to the general public;
- b. Where, because of size, location, coloring, content, or illumination, a sign may bear close resemblance to or being an imitation of highway or traffic sign or signals, and incorporates in any manner flashing or moving apparatus that may create a traffic hazard, (State of Indiana Motor Vehicle Laws, Article III);
- c. Which interfere with the view of any signal, traffic sign or street sign (State of Indiana Motor Vehicle Laws, Article III);
- d. Inactive signs or sign apparatus as defined in this Ordinance;
- e. Deteriorated, leaning, derelict, or structurally unsafe signs, which constitute hazards by reason of inadequate maintenance, age, or abandonment, as, defined in this Ordinance;
- f. On trees, telephone or light poles, fences, and on city streets or rightsofway, alleys or sidewalks;
- g. Obstructing ingress and egress from a door, window, fire escape or exit;
- h. Unlawfully installed, erected or maintained.

## G TECHNICAL PROVISIONS

1. Electrical Code:
  - a. The light source shall not be exposed in a manner as to create hazards to pedestrians and motorists. The light source shall be shaded, hooded, or adequately screened to prevent the obstruction of pedestrian or motorist visibility.
  - b. All electrically illuminated signs with exposed terminals shall be erected or maintained in such a manner that the exposed tubing or terminals will be at least ten (10) feet above the established grade, except where exposed tubing or terminals are properly protected as required by the 1981 Edition of the National Electrical Code. All electrical wiring must be in metal raceway. Underwriters Laboratory, or Electrical Testing Laboratories Certification, or equivalent, must be included in the permit application when signs are

electrically illuminated.

2. Fire Access: No sign or advertising display of any nature shall be installed, erected, maintained, or constructed in such a manner as to obstruct any fire escape or exit, or the ingress or egress from any window or door opening thereof, or be at any time attached in any manner to any fire escape.
3. Glass in Signs, Where Permitted:
  - a. Ornamental or plain flat glass shall not be permitted to be hung from any location which extends over a public right-of-way (only permitted type of sign projecting sign) unless the glass is supported at all times around the entire edge by a substantial metal supporting rib approved by the Building Commissioner and the glass is limited to one hundred (100) square inches in area within any one set of metal supporting ribs.
  - b. Exposed glass in any advertising display shall be permitted only when the area within any one (1) set of metal ribs is not greater than one hundred (100) square inches for each and every piece of exposed glass. The Building Commissioner may approve larger areas of exposed glass, plastic, or composition material, when properly enclosed and protected.
  - c. All metal supporting ribs in any advertising display shall extend over and cover at least fourteen (14) inches of the portion of the surface of the glass that is to be exposed.
  - d. In case a picture for fancy display is to be used in an exposed area of any advertising display, not more than two (2) open spaces not exceeding one hundred fifty (150) square inches each may be permitted in one advertising display.
4. Sound Devices: Public address systems, loud speakers, or sound amplifying systems shall not be used in conjunction with any outdoor advertising sign or structures. In all businesses, including shopping centers, all sound devices shall be used for communication within the building or buildings. The use of sound devices for advertising, communication, or the production of music outside the buildings, is prohibited.
5. Supports:
  - a. The dead load of projecting signs may be supported with chains or guy wires, and the working stress of the chains or guy wires shall not exceed one fifth (1/5) of the ultimate strength of the chains or guy wires shall not be less than one-fourth (1/4) inch in diameter. Chains or guy wires supporting the dead load of any such projecting sign shall be erected or maintained at an angle of not less than thirty degrees (30) with the horizontal. Supporting chains or cables may be used for the resistance of wind pressure, and the working stress of the supporting chains or cables shall be so designed that it will not exceed one fourth (1/4) of the ultimate breaking strength of the chains or cables. The least cross-sectional diameter of the chains or cables resisting wind pressure shall be erected or maintained at an angle of

forty-five degrees (45) or more with the face of the sign that the chains or cables are supporting.

- b. In no case shall there be less than two (2) chains or cables designed to resist the dead load and two (2) chains or cables on each side to resist the live load of any projecting sign having twenty (20) square feet in facial area. Chains or cables resisting a wind pressure on any side of a projecting sign shall be not more than eight (8) feet apart.
- c. All supporting chains or guy wires, where used either for the resistance of a live or dead load, shall be secured to a bolt or expansion screw that will develop the strength of the supporting chain, or cable, with a minimum one-half (1/2) inch bolt or lag screw secured by an expansion shield or other method approved by the Building Commissioner.
- d. Chains or guy wires used to support the live or dead load of projecting signs, erected or maintained at an angle of more than forty-five degrees (45) may be fastened to masonry walls with expansion bolts or by machine screw in iron supports. Where supporting chains or cables must be fastened to walls made of wood, the supporting or anchor bolts must go through the wood and be fastened securely on the other side.
- e. No staples or nails shall be used to secure any projecting sign or display to any building or structure, unless the sign or display weighs less than one (1) pound.
- f. Stiff arms, compression members, or members in flexure may be used to support either the live load or the dead load of a projecting sign, but the effective or unsupported length of the main compression members of any sign or stiff arm shall not exceed one hundred twenty (120) times the least radius of gyration, and for the secondary member, two hundred (200) times the least radius of gyration.
- g. In any projecting sign or advertising display, the extreme fiber stress of the steel to be used shall not exceed twenty thousand (20,000) pounds per square inch, and for wood, one thousand two hundred (1,200) pounds per square inch for any grade of lumber.
- h. In no case shall any advertising display support be attached to a parapet wall.

## H AUTHORITY

- 1. No sign as defined herein shall hereafter be erected, maintained or constructed by any person except as provided in this section, or until after a permit to erect, construct, or maintain the same has been obtained from the Administrative Zoning Officer. No such permit shall be issued until the prescribed fee is paid as set forth in this Ordinance.
- 2. In case any sign or advertising display shall be installed, erected, maintained, or constructed in violation of any of the provisions of this section, the administrative zoning officer shall notify, in writing, the owner or lessee thereof either to alter the sign so as to comply with this Ordinance and to secure the necessary permit thereof, or forthwith to remove the sign.

If the order is not complied with within ten (10) days after mailing the notice, the Article Administrative Zoning Officer may remove the sign at the expense of the sign owner, lessee thereof, or the property owner.

3. The Administrative Zoning Officer has the authority to appoint officers to enforce the provisions of this Ordinance. These officers have the authority to issue necessary citations, to issue tickets and to remove unlawful signs.
4. The Administrative Zoning Officer may adopt and prescribe suitable rules and regulations, consistent with the provisions of this Ordinance, concerning form and contents of all applications for the various kinds of permits herein required, and covering any other requirements for the applicant to protect the public safety and welfare.

## **I SIGN PERMIT PROCEDURES**

1. Procedures: No sign shall be installed, erected, maintained or relocated without obtaining a sign permit issued by the Administrative Zoning Officer in accordance with established procedures and inspections. The application shall include information, site plans, and specifications as may be required by said officer. Office records shall contain an accurate description of the sign for which a permit is issued, its location, photograph, and the date of completion of installation.
2. Provisions: Permit shall expire if work is not started within sixty (60) days of the date of the permit approval, or completed within one hundred twenty (120) days of said date. A sign permit is not completely approved until after the actual sign permit is obtained from the Administrative Zoning Officer and the sign is properly installed or erected and permit fee paid. If the applicant within does not obtain a sign permit, which has been approved by said Officer, from the office sixty (60) days of the date of permit approval, the permit is null and void.

## **J FEES**

Permit fee for all signs shall be \$50.

## **K PENALTY FEE**

Any person who shall erect, install or alter, as defined herein, a sign prior to obtaining a sign permit, shall pay twice the amount of the permit fee set forth herein and/or the Administrative Zoning Officer may initiate action in a court of competent jurisdiction to have said sign removed.

## **ARTICLE XVI**

### **Section 3 GASOLINE SERVICE STATIONS**

#### **A DEFINITION**

For the purpose of this Ordinance a gasoline service station shall be a retail place of business engaged in supplying goods and services essential to the normal operation of automobiles such as the dispensing of gasoline and motor oil; the sale and servicing of tires, batteries and other car accessories; the washing and lubricating of motor vehicles. This shall not include the sale of automobiles; the keeping of wrecked or disabled cars; the performing of body and fender work; or the painting or the performing of major motor repairs.

## B STANDARDS

No gasoline service station shall be permitted unless it shall meet the following minimum requirements:

1. The owner, lessor and/or lessee shall, upon making application for a gasoline station, submit a drawing describing the manner in which buildings will be located on the premises; the manner in which the site will be conditioned and beautified; location of all permanent or floating signs; and any other similar requirement which may be requested by the Administrative Zoning Office. The owner, lessee and/or lessor will be held jointly responsible for conforming to all the details of the plan as submitted. Any violation of a part of the plan shall be held to be reason for the nullification of a permit or refusal to issue one.
2. There shall be a maximum width of driveways at the sidewalk of thirty (30) feet.
3. There shall be a minimum setback of forty (40) feet from any and all streets.
4. There shall be a minimum frontage of one hundred and twenty (120) feet at the building line and a minimum of twelve thousand (12,000) square feet of lot area exclusive of rights-of-way.
5. The minimum distance from any driveway to any exterior property line shall be twenty (20) feet.
6. The minimum angle of intersection of driveways with the street pavement shall be sixty (60) degrees.
7. The minimum distance between curb cuts shall be thirty (30) feet.
8. No service station shall be erected, operated or maintained where an entrance or exit for motor cars is located on the same side of the street within one hundred (100) feet of a pedestrian entrance or exit from a public or private school, park, parkway, playground, library, church, hospital, home for children or senior citizens, or other public or semipublic institution.
9. No gasoline pump shall be located closer than fifteen (15) feet to the nearest lot line or line of established street or highway. On a corner lot, when a gasoline pump or a series of pumps are placed in a pump island parallel to the lot line or at an angle to the lot line, the end pump nearest to the street shall be located not closer than twenty (20) feet to the street line, measured along

the axis of said pump island or islands.

10. The minimum distance from any driveway to any interior lot line shall be ten (10) feet.
11. A raised curb six (6) inches high and two (2) feet wide shall be placed within the street right-of-way.
12. All hydraulic hoists and pits, lubrication, greasing, auto washing and repair equipment shall be entirely enclosed within a building.
13. Every lot used as a gasoline service station shall be paved with asphaltic or concrete surfacing and shall be adequately drained.
14. The minimum site of twelve thousand (12,000) square feet shall be limited to two (2) service bays and two (2) pump islands. Two (2) pump islands and one (1) bay may be added for each additional two thousand (2,000) square feet of extra site area.
15. A five (5) foot decorative fence shall be erected along all property lines separating the site from any dwelling and any Residence Zone.
16. Eight (8) onsite parking spaces shall be provided at a gasoline service station with two (2) or more service bays. In all other instances two (2) spaces shall be provided.
17. Exterior lighting shall be installed and maintained so as to cast no glare upon adjacent property or public right-of-way.
18. The parking of junk vehicles and rental vehicles shall not be permitted.

## C SIGNS

Gasoline service stations shall comply with the following sign standards in addition to those already specified in the Outdoor Advertising provisions as contained in this Ordinance.

1. Only two (2) pole signs shall be permitted for each gasoline service station, which pole sign shall be limited to advertising the trade name. The maximum permitted sign surface area shall be three hundred and twenty (320) square feet on each side of a double-faced sign.
2. No more than two (2) ground signs for each street frontage shall be permitted within the property lines, each of which shall not exceed twentyfive (25) square feet on each side of a doublefaced sign. Such sign shall be used to indicate services, prices, products, and the announcement of incentives. Such signs shall be installed as stationary, fixed structures, not subject to being dislodged by high winds and shall not be portable or temporary structures.
3. Wall signs shall be permitted on the principal service station building.

4. Signs shall be permitted on pump islands but shall not exceed twenty (20) square feet on each side of a doublefaced sign.
5. Window signs shall be permitted but shall not exceed six (6) square feet in area.
6. Display signs shall be permitted but shall not exceed six (6) square feet in area.
7. No sign shall be attached to a decorative fence installed with the purpose of screening the gasoline service station from a dwelling or Residence Zone.
8. Incidental signs shall be permitted as follows: (a) Station for sale, rent or lease; (b) Identification of the operator, one (1) foot vertical and six (6) feet horizontal; (c) Directional signs one (1) square foot maximum. Only one sign for each subject shall be permitted.
9. No signs shall be placed on curbs or outside the property lines.
10. No signs shall be placed or installed on a site of a gasoline service station, which will interfere with the vision of motorists and will constitute a traffic hazard.

## **ARTICLE XVI**

### **Section 4 DEVELOPMENT STANDARDS**

#### **A INTENT AND PURPOSE**

These provisions are for the purpose of promoting the public health, safety, comfort, morals, convenience and general welfare; of securing adequate light, air, convenience of access, and safety from fire, flood and other danger; and of lessening or avoiding congestion in public ways. Further, it is the intent of these provisions to promote good planning by providing for consistent and coordinated treatment of multifamily, commercial and industrial development in the Town of Daleville, Indiana and to promote quality, orderly development, efficient traffic flow, innovative site designs, efficient land use, and capital investments while protecting and enhancing the surrounding residential uses and natural resources located in Daleville, Indiana.

#### **B DEVELOPMENT STANDARDS**

1. **APPLICABILITY.** The Development Standards contained in this Section shall apply to all development other than one-and-two family residential use. No new building or structure shall be constructed or used in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used unless the requirements of this Section are met.
2. **EXEMPT USES.** The following land use activities are exempted from the requirements of this Section.



- a. One and two family dwellings.
- b. Ordinary and necessary repair and/or maintenance of existing structures, improvements or uses.
- c. Exterior alterations or one time enlargements or additions to any existing multi-family, commercial, industrial structure which will not increase the gross floor area of the existing structure by more than twenty-five percent (25%) or will not increase the ground coverage by more than ten percent (10%).
- d. Exterior alterations or additions and interior alterations to an existing nonmultifamily, noncommercial, and nonindustrial structure which do not substantially change its nature or use.

### 3. PROCESS

- a. **PROCEDURE.** A development plan shall be submitted prior to the establishment of any use of land, the issuance of any permits, or the erection, construction or structural alteration of any buildings. Developers shall file a development plan with the Building Commissioners Office under established procedures for the obtaining of local permits. The development plan shall contain sufficient detail to ensure compliance with the standards contained herein. Any amendments to a development plan, whether required by a public entity or proposed by a developer, must be shown on an amended development plan and filed with the Building Commissioners Office to ensure permits are updated, as applicable.
  - b. **TIME LIMITATION.** Local permits issued under an approved development plan shall be valid for three (3) years from the date the permit is issued. If site improvement work has not commenced in the three (3) year period, new permits must be obtained in the same manner as for the original permits.
  - c. **SURETY.** Surety may be required for certain improvements to ensure their installation. Such surety shall be approved by the appropriate jurisdictional entity in amount and form, including, but not limited to, a bond, a letter of credit, or a personal guaranty.
  - d. **PERMITS AND CERTIFICATES OF OCCUPANCY.** No construction or site improvement work shall commence prior to the issuance of all required permits. No Certificate of Occupancy shall be issued until all improvements shown on the development plan are installed or the applicant for improvements not yet completed has provided surety acceptable to the appropriate jurisdictional entity.
4. **GENERAL OBJECTIVES.** Sites to be developed shall be of such character that they can be safely used for building purposes without danger to the public health or safety, or peril from fire, flood or other causes. The proposed development should be visually compatible with the character of the community to the extent feasible. Vegetative screening shall separate

commercial and industrial uses from residential properties. Site development should accomplish the following objectives:

- a. Adequate and safe vehicular and pedestrian circulation between the site and the public street network.
  - b. Safe and adequate interior site vehicular and pedestrian circulation, parking and loading facilities.
  - c. Year-round accessibility.
  - d. Environmentally sensitive areas shall be protected and left undisturbed.
  - e. Adequate drainage facilities per approved drainage plan.
  - f. Mitigation of the adverse effects of spillover light, smoke, noise, glare, vibration, odors, or noxious and offensive uses.
  - g. Adequacy of site to accommodate onsite waste treatment and water facilities unless adequate central or public sewer and water service is provided.
5. STANDARDS. Development plans shall comply with the following standards and the provisions of this Ordinance. Where standards may conflict, the more restrictive shall prevail.
- a. Building Setback Lines: Commercial, Multi-Family, Non-Agricultural, Non-1&2 Family Use:
    - 1) Public Road Setback: All buildings shall be setback a minimum of fifty (25) feet from a public roadway, measured from the wall of the building to the right-of-way line, existing or proposed whichever is nearest.
    - 2) Private Road Setbacks: All buildings shall be setback a minimum of twenty (20) feet from a private roadway, measured from the wall of the building to the pavement.
    - 3) Side and Rear Setbacks: All buildings shall be setback a minimum of fifty (25) feet or two (2) times the building height, whichever is greater, when abutting a residence, a Residence Zone, measured from the wall of the building to the lot lines. All buildings abutting a commercial zone shall be setback a minimum of fifteen (15) feet, measured from the wall of the building to the lot lines. All buildings abutting an industrial zone shall be setback a minimum of twenty (20) feet, measured from the wall of the building to the lot lines.
  - b. Building Setback Lines Industrial Use:
    - 1) Public Road Setback: All buildings shall be setback a minimum of one hundred twenty

(120) feet from any interstate, one hundred (100) feet from any primary roadway, eightyfive (85) feet from any secondary roadway, and sixtyfive (65) feet from all other public roadways, all as measured from the wall of the building to the rightofway line, proposed or existing whichever is nearest.

- 2) Private Roadway Setback: All buildings shall be setback a minimum of thirty (30) feet from a private roadway, as measured from the wall of the building to the pavement.
- 3) Side and Rear Setback: All buildings shall be setback a minimum of fifty (50) feet or two (2) times the building height, whichever is greater, when abutting a nonindustrial nonagricultural zone, as measured from the wall of the building to the lot lines. All buildings abutting an agricultural zone shall be setback a minimum of thirty (30) feet, as measured from the wall of the building to the lot lines. All buildings abutting an industrial zone shall be setback a minimum of fifteen (15) feet, as measured from the wall of the building to the lot lines.
- 4) General Residential Setback: No building or structure shall be closer than one hundred (100) feet to any dwelling or Residence Zone.

c. Greenbelt

- 1) A greenbelt area shall be required on that portion of a front yard which is immediately adjacent and parallel to the right-of-way, existing or proposed whichever is greater, of any public roadway having a minimum depth of thirty (30) feet. On corner lots, a green belt area shall be required on that portion of a yard which is immediately adjacent and parallel to the side street public rightofway, existing or proposed whichever is greater, having a minimum depth of ten (10) feet. Green belt areas shall be composed of grass and/or softscape treatment only with the following exception: a retention/detention pond may be permitted in the green belt area provided that the area of the pond comprises no more than twentyfive percent (25%) of the green belt as measured at the normal waterline for wet bottom basins or at the top of the bank for dry bottom basins, and provided, further, that freeboard heights shall not exceed four (4) feet, that all bank and dry bottom basin treatment shall be as green space, and that fencing shall only be permitted as a part of an overall landscape plan; and pedestrian walkways may be permitted provided the walkway does not occupy more than ten (10) percent of the green belt and green space is maintained on both sides of the walkway. Access roads and driveways may cut through a green belt area perpendicular to the public roadway or parallel to a lot line without replacement requirements. If access roads and driveways are located within a green belt area in any other manner, the green belt area shall be increased by at least an equal amount of area.

d. Access

- 1) Access Roads: An access road shall mean a private roadway, providing ingress/egress

for vehicles to enter and/or leave a lot from a public roadway, which provides access to more than one building, lot or use.

- 2) Driveway: A driveway shall mean a private entrance, providing ingress/egress for vehicles to enter and/or leave a lot from a public or private access road, which provides access to one building, lot or use.
- 3) Pedestrian Facilities: Pedestrian facilities shall mean walkways providing access from building entrance to building entrance, parking area to building entrance, and/or parking area to parking area.
- 4) Construction and Maintenance: All facilities (access, drive, pedestrian) shall be constructed and maintained so as to provide year round access and so that it will be maintained free of dust and debris.
- 5) Design: In cases where sites have frontage on more than one public road, the principal point of access shall be from the more secondary road whenever feasible as determined by the County Engineer based on functional classification and traffic counts. There shall be a minimum distance of thirtyfive (35) feet between proposed points of access and existing drives on public roadways. Points of access shall be combined wherever possible to minimize the number of access points onto public roadways. There shall be a maximum of two (2) points of access per frontage. No driveway centerline shall intersect a street line less than seventy (70) feet from the intersection of any two public roadways or from the intersection of any public roadway and access road except that where a proposed access road lies within one hundred (100) feet of an existing three way public or private road intersection, the centerline of the access road shall be in line with the centerline of such intersecting road. The minimum maintained width of an access road shall be eighteen (18) feet for two-way traffic and ten (10) feet for one-way traffic. .Wherever possible, access roads and driveways shall be designed so as to avoid funneling traffic into single family residential areas. Except for industrial uses, access roads and/or driveways shall be designed to allow for interconnection among and between contiguous lots in order to minimize turning movements onto and from public roadways. Except for industrial uses, pedestrian facilities shall be designed to allow for interconnection among and between developments and within a development to minimize conflicts with vehicular traffic and to promote safe and efficient access from entrance to entrance to parking areas. All facilities (access, drive, pedestrian) shall be constructed under design standards approved by the Town Engineer. Any facilities located within State rightofway shall be subject to design and construction approval by the State. Additional traffic generated together with existing traffic shall not exceed the capacity of the public roadways serving the development. Where additional traffic is likely to result in a significant decrease in traffic safety conditions or increase in congestion, as determined by the entity having jurisdiction over the public roadways, that entity may require the applicant to provide reasonable and appropriate improvements. The applicant may elect to reduce the size or density of the proposed development.

e. Parking and Loading

- 1) The number of offstreet parking and loading spaces are as established in Section 2 of this Article.
- 2) Required and overflow offstreet parking areas may be located in the area between a green belt and the building setback lines. At the perimeter, such parking areas shall be screened with a masonry wall, fence, berm or hedge at least thirty (30) inches in height, above the grade of the adjoining parking area, when located across a two lane public roadway from existing 1 and 2 family use and where the parking area design would require parked vehicles to front toward the public roadway. Such screening may be located in the green belt area closest to the parking area.

f. Lighting

Lighting provided on the site to ensure safe movement of persons and vehicles and for security purposes shall conform to the following:

- 1) All lighting shall be designed and arranged so as to minimize glare and reflection on adjacent properties. All lights shall be of a "cut-off" type with the lighting element completely shielded on all sides and top, excluding historic ornamental light fixtures and globes.
- 2) The maximum height of free standing lights shall not exceed twenty (20) feet when within 200 feet of 1 & 2 family use and shall not exceed thirty (30) feet when located more than 200 feet from 1 & 2 family use.
- 3) The maximum height of lighting fixtures for pedestrian areas, including sidewalks adjacent to streets, is to be 16 feet. These fixtures should be placed every 50 feet.
- 4) Site lighting shall be of uniform design and materials, and shall compliment the architecture and landscape of the developed site.
- 5) Lighting within gas station canopies and adjacent to residential areas shall be of a "down lighting" type with a light element completely shielded on all four sides and top.
- 6) Lighting shall not cause illumination of adjacent residential properties and shall provide warm white lighting. Lights shall be located to provide maximum visibility and safety.

g. Trash Collection Areas

- 1) Trash collection areas shall be effectively screened from public roadway view and view from adjacent noncommercial, nonindustrial properties.

- 2) Trash collection areas shall be located where their use will not interfere with traffic circulation of a public roadway or an access roadway.

h. Outside Storage

- 1) Permanent outside storage of supplies and materials shall be screened from public roadway view and from the view from adjacent noncommercial, nonindustrial properties and uses. This provision shall not apply to the outside display of merchandise nor to temporary outside storage of supplies and materials used during onsite construction activities.
- 2) Outside display of merchandise shall not be closer than thirty (30) feet to any public roadway rightofway line, existing or proposed, and shall not be closer than fifteen (15) feet to any access roadway pavement. Outside display of merchandise shall be reasonably screened from the view of adjacent noncommercial, nonindustrial properties and uses.
- 3) No outside storage of supplies and materials or outside display of merchandise, and accompanying screening, shall be placed in a manner which would impede visibility at points of ingress/egress.

i. Landscaping.

All portions of properties that are not intended for development shall remain in their natural state or be suitably landscaped with planting of trees (shade or ornamental), shrubbery, ground cover, grasses, mulches, etc. Landscaping shall minimize erosion and storm water runoff, provide necessary buffering and generally serve to blend the proposed use with the character of the surrounding natural area. The following landscaping standards shall be met.

- 1) Landscaping materials selected shall be appropriate to local growing and climatic conditions. Native species of plants shall be included in the plan whenever possible. Whenever possible, natural vegetation shall be maintained by appropriate construction practices and site layout. To provide for easier and more cost efficient maintenance, the following trees, which are prone to disease, excessive breakage, and other problems, shall not be used and/or planted as a part of any required landscape plan: acer negundo, box elder; acer saccharinum, silver maple; ailanthus altissima, treeofheaven; morus species mulberry; populus deltoides, cottonwood; and ulmus pumila, siberian elm. To protect the landscaping investment, care should be given to appropriate placement of trees to allow for growth of the root system without adversely affecting other improvements and adequate area for capturing rainfall.
- 2) Whenever appropriate, existing trees should be conserved and integrated into the plan. Healthy trees with diameters of twelve (12) inches or greater, measured at four (4) feet

above grade, shall be marked on the plan and preserved to the extent possible. Where it is necessary to remove such mature trees, replacement trees shall be planted throughout the site at a ratio of 2 new trees for each 1 removed. These replacement trees may count toward meeting the tree planting requirements set forth for the green belt and for parking spaces. Replacement trees shall have a minimum trunk diameter of 2.0 inches upon planting, measured at 6 inches above grade, for shade and evergreens, or 1.5 to 2.0 inches upon planting, measured at 6 inches above grade, for ornamental trees.

3) Landscape treatments shall be required based on the following:

Greenbelts, as defined herein, where landscaping shall include either shade and evergreen trees and/or ornamental trees as follows: 1 shade/evergreen tree for each 50 feet of frontage with a minimum diameter of 2.0 inches measured at 6 inches above grade; or 1 ornamental tree for each 35 feet of frontage with a minimum diameter of 1.5 to 2.0 inches measured at 6 inches above grade. The location of such trees is at the discretion of the developer/owner provided the required ratio is met and the trees are located in the green belt area.

Foundations, where foundation planting shall be equal to a minimum of 5 feet of landscaped area and 3 feet of sidewalk area for a minimum total of 8 feet in depth along the front wall of the building and, for a corner lot, along the side street wall of the building, excluding entryways and loading areas.

Parking spaces, where the total number of trees planted onsite shall, at a minimum, equal one tree for each ten (10) parking spaces. The location of such trees, which may include replacement trees, buffering trees and green belt trees, is at the discretion of the owner/developer provided the required ratio is met.

Peripheral areas, where there shall be a peripheral vegetated buffer strip a minimum of ten (10) feet in depth, excluding areas subject to the green belt requirement, along any lot line abutting a noncommercial, nonindustrial property.

- 4) Plantings and/or other landscape treatments (walls, fences, and berms) shall be required, and permanently maintained, when abutting 1 & 2 family usage to accomplish an immediate buffer at least five (5) feet in height. When abutting an undeveloped Residence Zone permitting 1 & 2 family dwellings, plantings and/or other landscape treatment shall be required to accomplish a buffer at least five (5) feet in height within 3 growing seasons.
- 5) Landscape requirements refer to either softscape treatment such as greenery, plants, grass, and trees or to hardscape such as decorative stone, brick, and masonry walls, except in the green belt area where softscape treatment is required. Generally, plants shall be spaced apart at distances no greater than two times the width of the plant at maturity.

- 6) All required landscaping shall be installed prior to the issuance of a Certificate of Occupancy. If it is not possible to install the required landscaping due to weather conditions or other circumstances, all landscaping shall be installed within eight (8) months of the first occupancy of the buildings on the site. Surety may be required to ensure installation, such as, but not limited to, bonds, letters of credit, or personal guaranties.
- 7) Maintenance: Trees, vegetation, irrigation systems, fences, walls and other landscape material that are installed as required per this ordinance, the Planning and Zoning Commission and/or the Board of Zoning Appeals are essential elements of a project. The petitioner and/or landowner, and their successors in interest are responsible for the regular maintenance of all landscaping elements such that they are kept in good condition. Specifically:
  - a) All plant material shall be maintained alive, healthy, and free from disease and pests and all plant materials which die following their installation shall be replaced with identical varieties or suitable substitutions.
  - b) All landscaped areas shall be free of weeds, litter, graffiti, and similar signs of deferred maintenance.
  - c) All landscape structures such as fences and walls shall be repaired or replaced periodically to maintain aesthetically appropriate and structurally sound conditions.
  - d) The maintenance and routine care of plant material located within the rights-of-way shall be the responsibility of the adjacent property owners.

For purposes of this section, maintenance and care shall include but not be limited to pruning, watering, fertilizing, and mulching, or any item that would constitute a safety hazard to pedestrian or vehicular traffic.

- 8) The Zoning Administrator, the Building Commissioner, or the Planning and Zoning Commission shall have the authority to visit any site to inspect the landscaping and check it against the development plan for enforcement purposes.
- j. Visibility at Intersections
- 1) Regardless of any provision of this Ordinance, nothing shall be erected, placed, planted or allowed to grow in such a manner as to impede vision between a height of three (3) feet and ten (10) feet above the centerline grades of intersecting public roadways in an area bounded by the rightofway lines of such intersecting streets and a line adjoining points along said intersecting rightofway lines fifty (50) feet from the point of intersection of said rightofway lines.



- 2) Regardless of any provision in this Ordinance, nothing shall be erected, placed, planted or allowed to grow in such a manner as to impede vision between a height of three (3) feet and ten (10) feet above the centerline grades of intersecting public roadways and access roadways in an area bounded by the rightofway line of the public roadway and the pavement line of the access roadway and a line adjoining points along said intersecting rightofway line and pavement line thirty (30) feet from the point of intersection of said lines.
- 3) The clear zone requirements for the State of Indiana shall prevail at public roadway intersections involving a state highway.

k. Signage/Outdoor Advertising.

Provisions dealing with outdoor advertising in general are set forth in Section 3 of this Article. Those provisions shall apply to offpremise signs regardless of the zone classification. Where standards may conflict, the more restrictive shall prevail.

- 1) OffPremise Sign: The minimum distance between offpremise signs, including signs located outside the area subject to the development standards contained herein, shall be one thousand (1,000) feet measured from any part of the sign. The maximum height for an offpremise sign shall be fortyfive (45) feet. The maximum number of offpremise signs permitted shall be three (3) per any mile along both sides of the primary roadway. For existing nonconforming offpremise signs, if fifty percent (50%) or more of such sign apparatus and/or sign boards is to be replaced, it must be made to conform to the provisions set forth above and elsewhere in this ordinance unless a variance can be obtained from the Board of Zoning Appeals under established procedures.
- 2) OnPremise Signs: The maximum height for any onpremise sign shall be fortyfive (45) feet and, additionally, the following height limitations and exceptions shall apply:

Limitation: No part of any onpremise sign shall be at a greater height than an imaginary surface extending outward from the major road rightofway toward the building line a distance of fifty (50) feet and upward from zero (0) feet to a maximum of fortyfive (45) feet at a slope of 0.9 [see On-Premise Sign Diagram below].

Exception: A sign may be allowed to break the imaginary surface if it is used as one (1) sign for multiple uses on the property and/or an area known by one name with multiple uses listed.

Within the green belt area, only onpremise ground signs shall be permitted at a ratio of one sign per property. No signs of a temporary nature shall be permitted in the green belt area such as, but not limited to, portable signs on wheels and banners.

## ON-PREMISE SIGN DIAGRAM

MAXIMUM

TRAVEL SIDE  
LANES DITCH

SCALE: 1"= 20'

EXAMPLES: 15' setback x 0.9 = 13.5' max. height  
50' setback x 0.9 = 45.0' max. height  
18' height / 0.9 = 20' setback

EXCEPTION: Clustered Use Sign (used by more than one use) may break the imaginary surface up to the 45' maximum

### C TRAFFIC IMPACT STUDIES AND IMPROVEMENTS

#### 1. Traffic Impact Study Warrants

A traffic impact study shall be required for any development, or for the accumulated impacts of phased development, that meets any of the following warrants:

##### Warrant 1: Land Use Intensity

This warrant is satisfied when a development generates more than 100 street peak hour direction trips.

##### Warrant 2: Level-of-Service

This warrant is satisfied if the traffic generated by the proposed development causes the level-of-service (LOS) of the adjacent streets/intersections to drop a level, or where nearby intersections presently operate at a level-of-service "D" or worse. LOS determination shall be in accordance with the procedures described in the Highway Capacity Manual.

##### Warrant 3: Roadway Modifications

This warrant is met when the proposed development is expected to significantly impact a roadway segment identified for improvement in the Local or State Transportation Improvement Program. This warrant is also met when the proposed development includes modifications to

the roadway system. Modifications include addition of lanes to accommodate site-generated traffic, addition of exclusive turning lanes, acceleration/ deceleration lanes, median openings, installation of traffic signals and other traffic control devices, etc.

#### Warrant 4: Special Cases

This warrant is satisfied if the preliminary study reveals that the traffic generated from the proposed development will create safety, operational, or some other traffic problem, as determined by the County Engineer or the Indiana Department of Transportation.

## 2. Traffic Impact Improvements

Based upon the traffic impact study, improvements shall be required to maintain the current level of service of the adjacent streets/intersections and nearby intersections. Improvements may also be required by the County Engineer or the Indiana Department of Transportation to address access requirements, safety, operational or other traffic flow concerns. All such traffic impact improvements are the responsibility of the owner/developer of the property and may be accomplished either solely by the owner/developer or in partnership with a public or private entity.

#### Dedication of Right-of-Way

Right-of-way shall be dedicated for existing roadways either in accordance with the Official Thoroughfare Plan or in a width sufficient to encompass all improvements required as a result of the traffic impact study, whichever is greater. Where new public roads are proposed, they shall be developed and dedicated in accordance with the rules and procedures set forth in the Subdivision Ordinance.

## D APPEALS

1. APPEALS. An owner may appeal any decision rendered in connection with this section to the Board of Zoning Appeals or request a variance from development standard under established schedules and procedures set forth in Article XXXII of this Ordinance.

## ARTICLE XVII SPECIAL USES

### ARTICLE XVII

#### Section 1 GENERAL

The purpose of this Article is to enable the establishment of certain uses enumerated in this article not otherwise permitted in this Ordinance under reasonable and uniform limitations, safeguards and controls deemed to be in the public interest.

## **ARTICLE XVII**

### **Section 2      PROCEDURES AND STANDARDS**

#### **A   PROCEDURES**

An application requesting authority to establish a special use in certain districts as herein permitted shall be filed with the Town of Daleville Board of Zoning Appeals in the same manner as for an appeal, on forms prepared for the purpose and under established rules and schedules.

Upon receipt of the application, a copy shall be forwarded to the Planning and Zoning Commission. Said Commission shall make a thorough study and evaluation of the case and shall submit its recommendations to the Board in writing.

After having received the report of the Planning and Zoning Commission, the Board shall set a date for a public hearing and shall give notice of the hearing to all interested parties. At the hearing the report of the Commission shall be read in total and shall be made a part of the proceedings of the public hearing as well as part of the Board's record.

The Board of Zoning Appeals shall not be bound by this Article to permit special uses per se, but shall carefully consider the report of the Commission, the prayer of persons aggrieved, the existing conditions on the premises and its surroundings. The Board may compel the submission of any data deemed essential in determining whether or not the proposed special use is compatible with surrounding areas.

The Board of Zoning Appeals may impose reasonable conditions and require commitments concerning the operation and development of a special use. Unless other wise directed by the Board, a special use ceases to be authorized and is void if it is discontinued for a twelve (12) month period during which time it is not succeeded by the same specific special use or if the use ceases to comply with the approval, any conditions and/or any commitments set forth by the Board.

#### **B   STANDARDS**

1. The establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, convenience or general welfare.
2. The special use will not be injurious to the use and enjoyment of the other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district.
4. Adequate utilities, drainage facilities, landscaping, buffering and other amenities will be provided and the site plan shall indicate that the lot area and access to the site are adequate for the use contemplated.

5. Adequate measures will be taken to provide ingress and egress designed so as to minimize traffic congestion in public streets.
6. The special use shall be permitted only if the public streets, drainage facilities and utilities are adequate to serve and accommodate the proposed development or that the applicant will provide improvements to enable such adequate service and accommodation based on the needs and impact of the proposed improvement.

## **ARTICLE XVII**

### **Section 3 MINERAL EXTRACTION**

#### **A GENERAL**

Except as herein provided, nothing in this Ordinance shall prevent (outside of urban areas) the complete use and alienation of any mineral resources or forests by the owner or a licensee thereof. For the purpose of this Section, urban areas shall include all lands or lots within the limits of incorporated cities and towns and any other lands or lots used for residential purposes where there are eight (8) or more residences within any quarter mile square area, and such other lands and lots as have been or are planned for residential areas contiguous to incorporated cities or towns. For the purpose of preserving mineral resources and using them in the development and growth of the community, the encroachment of other uses upon lands where such resources may be obtained should be avoided.

#### **B ZONES IN WHICH PERMITTED**

The mining of minerals shall be considered a special use and may be permitted by the Board of Zoning Appeals.

#### **C QUALITY STANDARDS**

In determining whether or not the working of an area for the extraction of minerals is feasible and whether or not such operation should be permitted, the Planning and Zoning Commission and the Town of Daleville Board of Zoning Appeals may consider the following factors:

1. The depth of overburden
2. The quality of deposits at various depths
3. The engineering problems concerning size and area
4. Existing and future land use
5. Ingress and egress and similar traffic problems

## 6. Proximity of existing residential development

In determining the feasibility of a project, the Commission and the Board may avail themselves with technical aid from State and Federal agencies with expertise in the question of mineral resources.

## D STANDARDS OF OPERATION

The following standards shall be complied with:

1. No excavation below adjoining property elevation closer than one and onehalf (1 1/2) feet horizontal to one (1) foot vertical from the boundary of adjoining property measured at top excavation shall be permitted.
2. All equipment used for the production of rock and gravel shall be operated and maintained in such a manner as to comply with applicable State and Federal regulations.
3. Noise level shall not exceed the decibel limits set forth by the State and Federal governments.
4. All access roads from the operation of mining grounds to a public road or to adjoining lands shall be treated in such a manner as to render them dust free for at least two hundred (200) feet of any road or zone.
5. All excess water shall be drained from trucks or other vehicles hauling materials from the location prior to their entrance into a public highway.
6. All lights on site shall be installed in compliance with current and acceptable industrial standards.
7. Buildings on the premises shall not become unsightly. Weeds and other such obnoxious vegetation shall be cut, trimmed or sprayed periodically to preserve the character of the property and to prevent harmful effect upon surrounding areas.
8. The site may be used for allied or accessory uses, except for the disposal of refuse and similar uses.
9. No production shall be permitted which creates a slope steeper than one (1) foot horizontal to one (1) foot vertical with the exception of rock quarrying, in which case a vertical face will be accepted.
10. Property used or to be used for production shall be enclosed along the exterior perimeter bordering on a highway, street or thoroughfare by an acceptable barrier.
11. Every point along the property lines within three hundred (300) feet of a dwelling, school, playground, hospital or institution for human care shall be treated in the following manner:

- a. Where accumulation of water reaches one (1) foot or more in depth and occupies an area of one hundred (100) feet or more, all access to such accumulations shall be barred by a wire mesh fence at least four (4) feet in height or an equally effective barrier.
  - b. Where slopes steeper than one (1) foot vertical to two (2) feet horizontal exist, or more than eight (8) feet in height, access to such slopes shall be barred by a wire mesh fence at least four (4) feet in height or an equally effective barrier.
12. Whenever production shall have been completed, all plants and equipment shall be entirely removed from the property and all stockpiles shall be removed or backfilled into the pits within a reasonable time after such completion.
  13. Digging shall not be permitted to depths in excess of those permitted by the State of Indiana.
  14. Every operator shall be insured before commencing the operation of rock and gravel removal. Any producer who may establish a rock and gravel operation after the adoption of this Ordinance shall post a bond with the Town of Daleville, Indiana, to assure total compliance. Such bond shall run for three (3) years and shall be in the amount of not less than one hundred thousand (100,000) dollars.

Not more than one (1) year prior to the termination of operations, persons or corporations engaged in rock and gravel mining shall prepare and make available to the Planning and Zoning Commission and the Town of Daleville Board of Zoning Appeals plan for the restoration of affected lands. Such plans may include slope modification, planting, reforestation, the elimination of hazards and similar measures.

## E REPORT

All persons or corporations engaged in rock and gravel mining shall prepare and make available to the Planning and Zoning Commission information containing the progress achieved in the mining of minerals. Such report shall be filed with the Commission at five (5) year intervals.

## F CONTINUATION OF USE

The continuation of the extraction of mineral resources may extend beyond the portion of the property being worked to the exterior boundaries of said property, provided the operation shall comply with the standards prescribed in this Section.

## G PERMITS

No mineral resources shall be removed or processing plant be erected until and unless an improvement location permit has been obtained from the Administrative Zoning Officer.

No permit shall be issued for any new excavation or mining operation unless such officer from the Town of Daleville Board of Zoning Appeals has received the necessary authorization.

## H APPLICATION

Application for the extraction of minerals shall be made in writing and shall contain the following data:

1. Name and business address of the applicant.
2. Zoning classification of the property.
3. An accurate map showing exact dimensions of the property to be mined.
4. Consent of the title owner of the premises involved by a notarized instrument.

## ARTICLE XVII

### Section 4 SALVAGE YARD

#### A DEFINITION

A salvage yard shall be an area where waste paper, rags, discarded or salvaged materials are bought, sold, exchanged, bailed, packed, disassembled or handled. A salvage yard shall include auto wrecking yards, dismantling of machinery, house wrecking yards, used lumber yards and places or yards for the storage of salvaged house wrecking and structural steel materials and equipment. A salvage yard shall constitute only that portion of a lot where waste materials, papers, rags or discarded or salvaged materials, automobiles not in running condition, house wrecking materials, dismantled machinery and equipment are concentrated upon. The presence of such materials on a part of a lot shall not preclude the use of the remaining unused area of the lot for salvage purposes.

#### B ZONES IN WHICH PERMITTED

A salvage yard may be permitted in the Industrial Zone as a Special Use subject to the determination of the Town of Daleville Board of Zoning Appeals.

#### C CONDITIONS

A salvage yard may be permitted under the following conditions:

1. No salvage yard shall be closer than three hundred and fifty (350) feet to any highway, road, street, and not less than five hundred (500) feet to any dwelling, school, church or institution for human care.
2. A salvage yard shall be provided with an adequate road, passable under any weather conditions.
3. A salvage yard shall be enclosed along all the exterior boundaries by an approved fence of a type prescribed by the Town of Daleville Planning and Zoning Commission, and the same shall have only one (1) entrance or exit.



## **ARTICLE XVII**

### **Section 5 REFUSE DISPOSAL SITE**

#### **A DEFINITIONS**

A refuse disposal site shall mean an area privately or publicly owned, operated for the purpose of dumping and sanitary covering of solid wastes. The term "solid waste" shall mean anything discarded such as garbage, rubbish, trash, litter, junk and refuse, except solids and dissolved materials in domestic sewage and other significant pollutants in water sources, such as silt and dissolved or suspended solids in industrial waste water.

#### **B ZONES IN WHICH PERMITTED**

Refuse disposal sites may be permitted in the Industrial Zone subject to the determination of the Town of Daleville Board of Zoning Appeals.

#### **C PROCEDURE**

Any individual, group of individuals or corporation wishing to establish a refuse disposal site or sites shall:

1. Submit a request for such site on forms provided by the Town of Daleville Board of Zoning Appeals.
2. Submit a map to scale showing the proposed site including adjacent area, and a complete plan on how such site is to be developed.
3. Submit data relating to existing soils, including seasonal high water table, type and source of cover material.
4. Show proof that they own or can rent the necessary machinery to operate efficiently.

Upon receiving all the aforementioned data, the Town of Daleville Board of Zoning Appeals shall transmit copy of the same to the Town of Daleville Planning and Zoning Commission. The Commission shall study the case, availing itself with all necessary expertise, and shall make recommendations to the Board as to whether or not the proposed refuse disposal site or sites fit into present and future land use patterns and further, as to whether or not the site is adequate and pollution free. The determination of the Commission shall be made at a regular meeting and forwarded to the Board in writing.

Upon receiving the recommendations from the Town of Daleville Planning and Zoning Commission, the Town of Daleville Board of Zoning Appeals shall then make proper advertisement for a public hearing, notify all parties involved of the date and time of such hearing and generally proceed in the

same manner as for a variance, special exception or similar appeal. At the public hearing the recommendations of the Commission shall be read and made a part of the Board's record. Said recommendations may be to approve, approve with conditions, or disapprove. A decision of the Board, which may be contrary to the Commission's recommendations, shall require a quorum of affirmative votes; otherwise the Commission's recommendations will hold.

#### **D CONDITIONS UNDER WHICH A REFUSE DISPOSAL SITE SHALL NOT BE PERMITTED:**

1. Within one thousand (1,000) feet of an interstate or primary highway.
2. Within the floodway of any stream or body of water unless proper clearances are obtained in writing and filed with the Board and the Commission prior to consideration of a proposed site. Such clearance shall come from the United States Corps of Engineers and the Indiana Department of Natural Resources and shall be certified by the Executive Officer of each agency or his duly authorized representative.
3. Within an area from which leaching could drain into surface water.
4. Within sand and gravel pits, quarries, ravines, unless it can be ascertained that drainage can be effectively controlled.
5. Within running water, spring sites and in standing water.
6. Within one thousand (1,000) feet of a dwelling, school, church or institution for human care.
7. Within three hundred (300) feet of any industrial or commercial building.

### **ARTICLE XVII**

#### **Section 6 PLANNED UNIT DEVELOPMENT**

##### **A DEFINITION**

A planned multifamily development unit shall mean a singlefamily, twofamily, multifamily development or combination of all three uses developed as a single unit. The development may include group-housing, townhouses; cluster garden structures, apartments and condominiums.

##### **B ZONES IN WHICH PERMITTED**

Planned Multifamily Development Units may be permitted in the Residence Zone subject to the provisions of this Article.

##### **C PURPOSE**

The purpose of this planned Multifamily Development Unit is to provide a more desirable living environment than would be possible through the strict application of the provisions of this Ordinance;

to encourage a more desirable use of open areas; to induce innovations in residential development so that the growing demands for housing may be met by greater variety, type, design and layout of dwellings and by the conservation of land; to stimulate a more efficient use of public and private services, to provide means by which the type, design and layout of residential development can be related to sites and demands for housing consistent with the preservation of property values; and to add flexibility to zoning standards as shall encourage the disposition of proposals for such Multifamily Development Units without delay.

#### D PROCEDURE

The owner or owners of any tract of land ten (10) acres or more in area may file an application for tentative approval with the Planning & Zoning Commission. Said application shall include all of the following items:

1. Location and size of area involved
2. Density of land use
3. Location, function, ownership and manner of maintenance of common open space
4. Use, approximate height, bulk and location of buildings and other structures.
5. Feasibility of proposals for the disposition of sanitary and storm water
6. Covenants, grants and easements to be placed on the use of the land and buildings
7. Provisions for parking of vehicles and the location and width of proposed streets
8. Relationship of proposed streets to streets in the proximity of the project
9. Schedule of construction and a written statement of how the project would be consistent with residential growth

#### E PRINCIPLES AND STANDARDS

In considering the Planned Multifamily Development Units, the Commission and the Board shall adhere to the following principles and standards:

1. The population density and building coverage of the site for the project shall conform to the overall density and building coverage of the Zone in which it is located. However, lot dimensions, setbacks and area do not have to meet specific requirements of this Ordinance provided a more logical and desirable use of the property is proposed.
2. A variety of dwelling and building types shall be encouraged.

3. Where town houses are suggested, there shall be no more than five (5) town house units in any contiguous group. An average rear yard of twentyfive (25) feet would be desirable where a lot does not abut a park or open space easement. A minimum side yard on the two (2) end units, of contiguous town house groups, shall be seven (7) plus three (3) feet for each additional story over one (1) story.
4. Planting and utility strips may be eliminated and an equal amount of land area placed into acceptable public park.
5. Areas proposed for dedication must be acceptable in size, shape and location. Rightsofway for riding, hiking and other types of trails and scenic ways may be dedicated. Rightsofway for watercourses and similar channels shall not be acceptable for space exchanges.
6. Clustering of dwellings may be accomplished through a reduction of lot area with overall density remaining the same, and the provision of usable and desirable open space easements dedicated.
7. Public utility and similar easements shall not be used for space exchange.
8. Any project that proposes to dedicate land for park and open space must include the total park area at the time of the filing of the application.
9. Maximum privacy for each multifamily unit shall be provided through functional design, use of proper building materials and landscaping.
10. The architectural design and the placement of units and structures and the location of open/recreation space shall be developed so as to maximize compatibility with and protection of adjacent development.
11. Building coverage shall not exceed forty (40) percent of the net lot area. Recreation or open space area, such as linear greenways, parks, and conservation and habitat preserves, shall be designed from common use and benefit. Yard areas designed to serve individual units and/or structures shall not count as recreation or open space areas.
12. A minimum of twentyfive (25) percent of the total lot area, exclusive of parking and streets, shall be landscaped for recreation. Recreation or open space area, such as linear greenways, parks, and conservation and habitat preserves, shall be designed from common use and benefit. Yard areas designed to serve individual units and/or structures shall not count as recreation or open space areas.
13. All onsite utilities shall be placed underground.

## **ARTICLE XVII**

### **Section 7 TRUCK TERMINALS**

## A DEFINITION

A truck terminal shall be the use of property or buildings for the temporary parking of motor freight vehicles or trucks of common or contract carriers during loading and unloading and between trips, including necessary warehouse space for storage of transitory freight.

## B ZONES IN WHICH PERMITTED

A truck terminal may be permitted in the Industrial Zone.

## C CONDITIONS

A truck terminal may be permitted under the following conditions:

1. No property to be used as a truck terminal shall be located closer to any dwelling or Residence Zone than two hundred (200) feet.
2. The site shall be relatively flat, well drained, and large enough to accommodate any foreseeable needs for expansion.
3. The site shall be fully enclosed by a fence or wall adequate to insure that no portion of a vehicle shall extend beyond the lot line.
4. The principal access shall not be a local street but a secondary or major highway.
5. All vehicular exits and entrances shall be located not less than one hundred (100) feet apart.
6. Minimum distances on docks to property lines, measured at right angles to the docks shall be not less than eightyfive (85) feet where no parking of trailers along said property line is intended, or one hundred (100) feet when trailers are so parked, and sixty (60) feet where no pick up trucks are parked.
7. Driveways shall be kept open at all times so that there will be no necessity for maneuvering upon entering or leaving the property.
8. A five (5) to one (1) ratio of land to building shall be observed. The dock area shall be twice the size of the combined floor area of the trucks.
9. Truck terminals shall be paved with two (2) inches of asphalted concrete over a two (2) inch base of crushed rock.
10. All truck parking spaces shall be twelve (12) feet wide and twenty (20) percent longer than the trailer, with a maximum of sixty (60) feet. There shall be three (3) parking spaces for each

berth.

## **ARTICLE XVII**

### **Section 8 HOME OCCUPATION**

#### **A DEFINITION**

The term home occupation shall mean an occupation conducted in a dwelling unit by a member of the resident family, including dressmaking, artist and similar occupations, but not including a beauty parlor, barbershop, or real estate office.

#### **B ZONES IN WHICH PERMITTED**

A home occupation may be permitted in any Residence Zone.

#### **C CONDITIONS**

A home occupation may be permitted under the following conditions:

1. No person other than members of the resident family shall be engaged in such home occupation.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes.
3. No accessory building or structure shall be used to house a home occupation.
4. Not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
5. There shall be no change in the outside appearance of the dwelling or the premises or any visible evidence of the conduct of such home occupation other than one (1) sign not exceeding one (1) square foot in area, non-illuminated and mounted flat against the wall of the dwelling.
6. There shall be no sales in connection with such home occupation; no traffic shall be generated in greater volumes than normally expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and not in the required front yard.
7. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audio interference in any radio or television receivers off the premises, or causes fluctuations on line voltage off the premises.
8. There shall be no display of goods or commodities visible from the street; no goods or

commodities sold on the premises.

9. Home occupations shall include personal services when performed by the person occupying the dwelling as his or her own private dwelling and shall not include the employment of additional persons in the performance of such services.
10. A home occupation shall not be considered to include clairvoyance, fortune telling, experimentation that may involve the use of chemicals or other substances that may create noises, odors, or hazards to health, safety and welfare of the neighborhood. Neither shall a home occupation include hobby or curio shops, convalescing or nursing homes, tourist homes and gun shops.

## **ARTICLE XVIII ADMINISTRATION**

### **ARTICLE XVIII**

#### **Section 1 GENERAL**

##### **A PURPOSE**

The purpose of this Ordinance is to promote and protect the public health, safety, morals, comfort and general welfare of the people of the Town of Daleville, Indiana. Associated with this purpose is the establishment of an effective administrative system to fulfill the objectives of good, sound zoning. Such system should, among other things, expeditiously handle day by day matters concerning the citizens of the city and county with utmost care, courtesy and exacting ability; protect the right of appeal from any decision of an administrative officer; deal fairly with deliberate or accidental infractions of this Ordinance; and, through its function, create such climate as may deserve the respect of the community and the confidence of its citizens.

##### **B FILING FEES**

The Planning and Zoning Commission shall establish a schedule of fees for the filing of matters that come before the, BZA, and any other matter that have to be processed to carry out the provisions of this ordinance.

### **ARTICLE XVIII**

#### **Section 2 ADMINISTRATIVE OFFICES**

The administration of this Ordinance shall be with three (3) offices of local government, namely:

1. The Administrative Zoning Office.
2. The Planning and Zoning Commission.
3. The Board of Zoning Appeals

## **ARTICLE XVIII**

### **Section 3 ADMINISTRATIVE ZONING OFFICER**

#### **A APPOINTMENT**

The Daleville Building Commissioner shall also act as the Administrative Zoning Officer who shall be the enforcement officer of this Ordinance. The Town Council of Daleville, Indiana shall appoint him.

#### **B QUALIFICATIONS**

The Administrative Zoning Officer shall be a person of proven responsibility and knowledgeable in zoning administration and practice. He shall enforce the provisions of this Ordinance to their literal meaning and shall not try to exercise independent discretion that may violate it. He shall not permit the violation of any of the provisions of this Ordinance just because he considers it unduly severe as applied to specific cases, inasmuch as this Ordinance provides the necessary remedies. He shall not refuse to issue a permit for the construction of a building or structure or for the use of land on the basis of what he considers to be lack of wisdom in any zoning provision. He shall use the powers of his position to encourage compliance and advise citizens how such compliance can be achieved without unnecessary hardship.

#### **C DUTIES**

In addition to other administrative duties assigned to him periodically by Town Council, the Administrative Zoning Officer shall perform the following duties:

1. He shall issue all zoning permits and certificates of occupancy.
2. He shall conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Ordinance.
3. He shall maintain accurate records including, but not limited to, maps, amendments, variations, conditional uses and applications.
4. He shall receive, file applications for permits and shall forward details of any refusal to issue a permit to the Board of Zoning Appeals.
5. He shall revoke certificates of occupancy or zoning permits when violations of the provisions of this Ordinance are discovered by him.
6. He shall initiate court action as may be deemed necessary to prevent or abate violations to the provisions of this Ordinance; report all violations for prosecution to the proper legal authority; sign or cause to be signed all complaints to local courts prepared by the proper legal authority.

#### **D INSPECTIONS**



The Administrative Zoning Officer may, after giving at least forty-eight (48) hours notice to the proper person, examine premises to investigate possible violations. He shall state the nature of the violation to the owner or resident and give reasons for the inspection prior to obtaining entry into the premises.

#### E USE PERMIT

The Administrative Zoning Officer shall issue no use permit pertaining to the use of land or buildings unless the application for such permit has been examined and approved by said officer. Any use permit issued in conflict with the provisions of this Ordinance shall be cause for revocation. The application for a use permit shall include the following data and provisions:

1. Location of the proposed structure, including street name or names, house or lot number, zoning.
2. Name of the owner of property, type of work proposed and estimated cost of such work.
3. Use proposed for the building or structure, the area of the lot and dimensions of same, size of front, side and rear yards.
4. Number of families that will occupy the building, the height and number of stories of the building or structure, the number, size and type of any accessory building.
5. A sketch of the proposed layout of the lot, and affidavit attesting to the accuracy of the application.

Within two (2) days after an application for a use permit is filed, the Administrative Zoning Officer shall examine the application and shall advise the applicant or his agent as to whether or not the building, structure or use thereof complies with the provisions of this Ordinance. If he finds the data in order, the Administrative Zoning Officer shall issue the zoning permit. If he denies the permit, he shall inform the applicant of his findings and shall instruct him as to the applicant's right of appeal. He shall acquaint the applicant thoroughly with all current procedures to affect such an appeal. One (1) copy of the application, together with the plans, shall be returned to the applicant after the Administrative Zoning Officer shall have marked such copy either as approved or rejected, attesting to it by his signature on such copy. The Administrative Zoning Officer as part of the office's permanent record shall retain the original copy of the application, similarly marked.

#### F CERTIFICATE OF OCCUPANCY

No new building or improvement shall be occupied or land use started unless and until the applicant shall have applied for in writing and received a certificate of occupancy from the Administrative Zoning Officer. Such certificate shall be issued after the premises have been thoroughly inspected by said officer and found to be in full compliance with the provisions of this Ordinance.

## G FEES AND PENALTIES

### 1. PERMITS AND FEES

Permits shall be obtained from the applicable State and local permitting authorities dealing with development activities such as, but not limited to, building construction, electrical service, plumbing, heating and air conditioning, stormwater quality and quantity, erosion control, floodplains, wetlands, sewers and other sanitary facilities, and wells and water supply. Fee schedules are established by the applicable permitting authority. All applicable permits shall be obtained prior to beginning any construction and/or land alteration activities.

### 2. PENALTIES

When permits are not obtained prior to the beginning of construction and/or land alterations, penalties may be imposed as set forth by the permitted authority.

## H REMEDIES

The Commission, the Board or any designated enforcement official may institute a suit for injunction in the Delaware County Circuit Court to restrain an individual or a governmental unit from violating the provisions of this Ordinance. Said bodies may also institute a suit for mandatory injunction directing an individual or governmental unit to remove a structure erected in violation of the provisions of this Ordinance.

## ARTICLE XVIII

### Section 4 PLANNING & ZONING COMMISSION

#### A GENERAL

The Planning Commission (the Planning and Zoning Board) and Planning Director, shall establish the procedures and responsibilities for the administration and enforcement of this chapter in accordance with the following provisions and state legislation. The Commission shall keep minutes of its proceedings showing the vote of each member for each question, or indicating if absent, or failing to vote. A member of the Plan Commission may not participate in a hearing or decision of the Board concerning a zoning matter in which he or she has a direct or indirect financial interest.

#### B ZONING AMENDMENTS

From time to time and as conditions change, the provisions of this Ordinance may be amended, supplemented or changed. Application for changes in zone may be initiated by the Commission, or by owners of fifty (50) percent or more of the area involved in a petition, or by the Town Council of Daleville, Indiana. Any proposed ordinance for amendment not originating from action of the Commission shall be referred to it for consideration and report before the Town Council of Daleville, Indiana takes final action.

#### C FILING

Any persons seeking a change in zone shall make application for such change with the Planning and Zoning Commission in forms prepared for the purpose. The Commission may set the number of copies to be submitted and shall adjust each and every application to its regular schedule. The Commission shall hold a public hearing on the proposed change in zone or amendment, giving public notice in at least one (1) newspaper of general circulation in Delaware County. The notice shall state the date and time of the hearing; the description of the change; and the exact location of the property involved. The notice shall appear in the newspaper at least ten (10) days prior to the date of the public hearing. The proponent shall also submit a complete list of all surrounding property owners within a three hundred (300) feet radius of the property with the necessary postage to cause the mailing of notices to such owners except where a three hundred (300) feet radius would include only the immediately abutting properties, irrespective of public ways, the owners of the properties adjoining the immediately abutting properties, in an east, west, north, and south direction, shall also be notified.

#### D PUBLIC HEARING

The proponent of a zone change may appear in person, by agent or by attorney. He shall be given proper consideration. All public hearings and all meetings of the Commission shall be open to the general public. Opponents to a proposed change in zone shall be given adequate time to voice their opinions.

#### E DISPOSITION

The final disposition of a proposed change in zone shall be in the form of a motion, duly adopted, favorably or unfavorably recommending the change; or specifically setting forth modifications, variations or conditions. The Commission's action shall be forwarded to the Town Council of Daleville, Indiana for final action.

#### F BASIS FOR THE DECISION

In making a decision on a proposed change in zone or amendment, the Commission shall substantially determine the following:

1. That the change in zone will not adversely affect the values of surrounding property.
2. That the proposed use is the best and most adequate use of the property.
3. That the proposed change in zone does not constitute spot zoning; that the owner of the property in question is not being favored over surrounding property owners.
4. That the owner can comply with all the requirements of this Ordinance.
5. That traffic congestion will not be unnecessarily increased.

6. That the proposed change is in line with good zoning practice.

## G METHOD OF APPEALS

Any person aggrieved or affected by any provision of this chapter or by any decision of the Zoning Administrator or the Commission may appeal to the Board of Zoning Appeals, as provided by this chapter, by filing a written notice of appeal with the Office of the Clerk-Treasurer specifying the grounds thereof. The grounds for appeal will be specific and delineate the actual provisions of this chapter upon which the appeal is based. Appeals must be perfected by written filing within ten days of the decision appealed from. Every decision of the Board shall be subject to review by certiorari to the BZA and ultimately to the Town Council. The appeal fee shall be \$100 payable to the Clerk-Treasurer.

## ARTICLE XVIII

### Section 5 BOARD OF ZONING APPEALS

#### A GENERAL

The Daleville Board of Zoning Appeals shall be created under the provisions of IC 18751 et seq. of the Burns Indiana Statutes. It is not intended by this Ordinance to abrogate, annul or dismiss the said Board as constituted at the time of the enactment of this Ordinance.

#### B APPEALS

All matters brought before the Board of Zoning Appeals shall be known as appeals. There shall be three (3) types of appeals, namely:

1. Appeals from the review of an order, requirement or decision of the Administrative Zoning Officer. This shall include any interpretation rendered by said officer, which an applicant for a permit may deem questionable, or the refusal of the officer to issue a zoning permit.
2. Appeals in which a person is requesting a special use under the terms of this Ordinance.
3. Appeals requesting variances from the terms of this Ordinance when it is claimed that the literal enforcement of the provisions of this Ordinance may cause undue hardship.

#### C HEARINGS

All appeals shall be subject to public hearing. Prior to any public hearing an appeal shall be filed with the Board in forms supplied by it and in full compliance with established schedules and procedures. The Board shall give notice of the hearing in at least one (1) newspaper of general circulation in the County of Delaware, Indiana, at least ten (10) days in advance of the hearing. The appellant shall submit a complete list of all property owners within a three hundred (300) feet radius of the property with the necessary postage to satisfy the mailing of notices to such owners, and where a three hundred (300) foot radius would include only the immediately abutting properties, irrespective of public ways, the owners of the properties adjoining the immediately abutting properties, in an east, west, north and

south direction, shall be notified.

A certificate shall accompany application for appeal from the Administrative Zoning Officer stating the reasons for the appeal, the date on which the issuance of the permit was refused and all other pertinent information. All hearings and meetings of the Board shall be open to the general public. The applicant may appear in his own behalf or by an authorized agent or attorney.

#### D DISPOSITION

The Board shall keep minutes of its meetings and hearings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. Should the applicant fail to appear at the hearing or to appoint an agent or attorney to represent him, the Board shall dismiss the case.

Decisions of the Board shall be made within thirty (30) days from the time of the hearing and shall be entered in the minutes. The decisions shall include the reasons, the summary of evidence introduced, and the findings of fact made by the Board. When a variance is granted the record shall state in detail any exceptional difficulty and unnecessary hardship upon which the appeal was based.

The Board's decision may reverse, affirm, wholly or partly, the ruling of the Administrative Zoning Officer and shall be final unless the applicant seeks judicial review.

#### E VOTE

The concurring vote of the majority of the members of the Board shall be necessary to grant an appeal. Failure of a motion to receive such majority shall constitute a denial of the appeal. Decisions of the Board shall be available for inspection during normal office hours.

#### F WITHDRAWAL

An applicant may, in writing, withdraw his appeal at any time prior to the hearing or he may do so verbally at the hearing.

#### G TIME LIMITATION

An appeal shall not be taken after fifteen (15) days have elapsed from the time of a zoning permit or the Administrative Zoning Officer denied Certificates of Occupancy. If the Board grants an appeal, all necessary permits shall be obtained within ninety (90) days, and construction shall be completed within six (6) months from the time of the Board's action, unless otherwise directed by the Board.

#### H HEARING

No second hearing shall be entertained by the Board on a case ruled upon by it, unless new facts and evidence are submitted which, in the Board's judgment, materially changes the case. A plea for such second hearing shall be requested in writing to the Board. The Board shall determine prior to scheduling a second hearing if such facts and evidence do exist. Change in ownership of the property

affected by an appeal shall be insufficient reason for hearing. Should the Board, at a regularly scheduled meeting, decide that there are substantial grounds for a second hearing and it is fully satisfied that new evidence has been submitted; the applicant shall be advised in writing of the Board's ruling and will then be entitled to refile for rehearing in conformance with established schedules and procedures. The proper legal notices shall be published and all interested parties shall be duly notified.

## **I ADVICE**

The Board shall consider no informal request for advice, or moot questions. Any advice, opinion or information given by a Board member shall not be binding on the Board.

## **J PROOF FOR A VARIANCE**

It shall be incumbent upon an applicant to conclusively prove at the public hearing that, if he is compelled to meet the provisions of this Ordinance, he cannot secure reasonable use of his property; that the hardship claimed by him results from the application of the provisions of this Ordinance; that the hardship claimed is suffered by his property directly, and not merely by other properties; that the hardship claimed is not the result of the applicant's own actions.

## **K JUDICIAL REVIEW**

Each decision of the Board of Zoning Appeals is subject to review by certiorari. Each person aggrieved by a decision of the Board of Zoning Appeals may present, to the circuit or superior court of Delaware County, a verified petition setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. The person shall present the petition to the court within thirty (30) days after the date of that decision of the Board of Zoning Appeals.

# **ARTICLE XXXIII DEFINITIONS**

## **ARTICLE XIX**

### **Section 1 GENERAL**

In the interpretation of this Ordinance the words in the present tense shall include the future; words used in the singular number shall include the plural, and vice versa; the word "shall" shall be mandatory and not discretionary; the word "may" is permissive; the word "building" includes all other structures of every kind regardless of the similarity of buildings; and the phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", and "occupied for". Where definitions are based on state or federal definitions and citations may change, the term(s) continues to be defined as set forth in applicable state or federal regulations.

## **ARTICLE XIX**

### **Section 2 TERMS AND MEANING**

For the purpose of clarity and in order to avoid misunderstandings or misinterpretations, terms defined herein shall be interpreted only as defined.

1. Accessory building or use: A building or use subordinate to another structure or use located on the same lot which does not change or alter the character of the premises and which is not used for human occupancy. Shall include child's playhouse, garden house, doghouse, small green house, private garage, shed, storage building, off-street parking area.
2. Adult Bookstore: An establishment having as a preponderance of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
3. Adult Cabaret: A nightclub, bar, theater, restaurant or similar establishment which frequently features live performances by topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual areas and/or which regularly feature films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.
4. Adult Drive-in Theater: An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.
5. Adult Entertainment Business: An adult bookstore, adult motion picture theater, adult mini motion picture theater, adult motion picture arcade, adult cabaret, adult drivein theater, adult live entertainment arcade or adult service establishment.
6. Adult Live Entertainment Arcade: Any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances or other gyration choreography which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.
7. Adult Mini Motion Picture Theater: An enclosed building with a capacity of more than five (5) but less than fifty (50) persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an

emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

8. Adult Motel: A hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closedcircuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

9. Adult Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slugoperated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other imageproducing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

10. Adult Motion Picture Theater: An enclosed building with a capacity of fifty (50) or more persons used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

11. Adult Service Establishment: Any building, premises, structure or other facility, or any part thereof, under common ownership or control, which provides a preponderance of services involving, specified sexual activities or display of specified anatomical areas.

12. Advertising, Device: An advertising sign, billboard or poster panel which directs attention to a business, commodity, service, or entertainment not exclusively related to the premises where such device is located or to which it is affixed, but does not direct attention to the business on the premises or to a brand name of product or commodity with which the business is specifically identified and which is sold on the premises.

13. Airport: The area of land or water which is used or intended for use for the landing and taking off of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or airport facilities or rightsofway.

14. Alley: A public way, other than a street, customarily used for ingress and egress from service entrances of buildings.

15. Anatomical Exposure: The exposure of any human genital region, buttocks, female breasts, pubic areas, or any other part of the human anatomy, described as specified anatomical areas, designed to convey or express an erotic message. See also "Specified Anatomical Areas".

16. Apartment: A room or suite of rooms arranged, designed, used or intended to be used as a



single housekeeping unit.

17. Apartment House: A building other than a duplex residence in which there are three (3) or more dwelling units.

18. Basement: A portion of the building located below the main story, partly underground, but having less than onehalf (1/2) of its clear floor to ceiling height below the average grade of adjoining ground. A basement shall not be counted as a story for the purpose of height regulations unless it is occupied and used as a dwelling unit.

19. Block: An area that abuts a street and lies between two (2) adjoining streets or barriers such as a railroad right-of-way or waterway.

20. Boarding House: A residence in which table board or sleeping accommodations or both are provided for compensation of three (3) or more persons, but not to exceed fifteen (15) persons. A boarding house shall be synonymous with lodging house.

21. Building: A roofed structure for shelter, support, enclosure, or protection of persons, animals or property.

22. Building, Detached: A building having no structural connection with another building.

23. Building, Height: The vertical distance measured from the adjoining street centerline grade at a point opposite the center of the principal frontage of the building to the highest point of ceiling of the top story in the case of a flat roof. Where buildings are setback from the street line, the height of the building may be measured from the average elevation of the finished lot grade at the front of the building.

24. Building Line: The line establishing the minimum permitted distance on a lot between the front line of a building and the street rightofway line.

25. Building, Front: The wall of a building most nearly parallel with an adjacent street to the front of the lot on which the principal use is conducted.

26. Building, Principal: A building constituting the principal use of the lot.

27. Camp, Public: Any area or tract of land used or designed to accommodate two (2) or more automobile house trailers, mobile homes, cabins, tents or other camping outfits, but not intended for permanent year-round occupancy.

28. Cemetery: Land used for the burial of the dead, including crematories and mausoleums.

29. Charitable Institution: A not-for-profit corporation organized and operated to provide philanthropic, civic, social, or educational services and not the pecuniary gain of its trustees,

directors, incorporators or members and where the articles of incorporation have been approved and issued by the State of Indiana.

30. Child Care Center: A nonresidential building, licensed by the State of Indiana, where at least one (1) child receives child care from a provider as follows: while unattended by a parent, legal guardian or custodian; for regular compensation; and for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays and holidays. Also known as a day care center.

31. Church: A permanently located building commonly used for religious worship, fully enclosed with walls and having a roof (canvas or fabric excluded) and conforming to all applicable legal requirements affecting design and construction.

32. Clinic: An establishment where patients are admitted for special study and treatment by two (2) or more licensed physicians and their professional associates, practicing medicine together.

33. Club, Private: Buildings and facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not for profit which inures to any individual and not primarily to render a service that is customarily carried on as business. The affairs and management of a private club are conducted by a Board of Directors, and executive committee or similar body chosen by the members at an annual meeting. The serving of food and the sale of alcoholic beverages are secondary and incidental to the promotion of a common objective by the organization.

34. Condominium: An apartment building in which apartments are owned individually.

35. Drainage Inlet: Any surface opening to an underground Regulated Drain Tile system that drains to surface waters of the state; the term includes water and sediment control basins.

36. Dwelling: A building or portion thereof used primarily as a place of abode for one (1) or more human beings, but not including hotels, lodging houses, boarding houses, tourist homes or motels.

37. Dwelling, Attached: A dwelling that is joined to another dwelling at one (1) or more sides by party walls.

38. Dwelling, Detached: A dwelling, which is entirely surrounded by open space on the same lot.

39. Dwelling, Unit: One (1) or more rooms arranged, designed, or used as living quarters for one (1) family.

40. Dwelling, Singlefamily: A building containing one (1) dwelling unit only.

41. Dwelling, Twofamily: A building containing two (2) dwelling units only.
42. Dwelling, Multifamily: A building or portion thereof containing three (3) or more dwelling units.
43. Dormitory: A building arranged and used for the housing of individuals, with common toilet and bath facilities and not having individual cooking facilities.
44. Establishing An Adult Entertainment Business: Any of the following: a) the opening or commencement of any such business as a new business; b) the conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein; c) the addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or d) the relocation of any such business.
45. Family. (a) One (1) or more persons related by blood, marriage, or adoption living as a single dwelling unit. (b) Two (2) persons not related by blood, marriage, adoption living as a single dwelling unit. (c) One (1) or more persons related by blood, marriage, or adoption living as a single dwelling unit except that two (2) of the aforesaid persons may be unrelated by blood, marriage, or adoption.
46. Floodplain: The channel proper and the areas adjoining any wetland, lake or watercourse, which have been, or hereafter may be covered by the regulatory flood. The flood plain includes both the floodway and the floodway fringe districts as set forth in the Floodplain Management Ordinance for Delaware County, Indiana. The regulatory flood is a flood having a one percent probability of being equaled or exceeded in any given year, as calculated by a method and procedure acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency.
47. Floor Area: (a) When used to determine compliance with the minimum floor area requirements for a residence, it shall mean the sum of the horizontal areas of the several floors of the residence measured from the exterior faces of the exterior walls or from the center line of common walls separating residences, excluding carports, garages, breeze ways or open porches; (b) When used to determine lot coverage, it shall mean the horizontal area of the ground floor of a building measured from the exterior face of the exterior walls of such building; and (c) When used to determine the number of offstreet parking spaces required for nonresidential uses, buildings and structures, it shall mean the sum of the horizontal areas of the several floors of the building measured from the interior faces of the interior walls.
48. Frontage: All property fronting on one (1) side of a street between two (2) intersecting streets, measured along the street rightofway.
49. Garage, Private: A compartment within or attached to a residence, or any building located on land on which a residence is located, designed, arranged, used or intended to be used for the

storage of the private passenger automobiles of the occupants of the residence.

50. Garage, Community: Two (2) or more private garages.

51. Green Belt: An area of land with softscaped treatment consisting of natural vegetative material such as greenery, plants, grass and trees.

52. Gross Floor Area (GFA): The interior floor area of buildings and structures used to determine offstreet parking spaces. [See Floor Area definition (c).]

53. Health Center: A convalescent home, nursing home, rest home, institutions for human care, health resorts.

54. Hotel: A building containing rooms intended or designed to be used or which are used, rented, hired out to be occupied or which are occupied for sleeping purposes by guests and where general kitchen and dining room facilities are provided within the building or in an accessory building.

55. Institution, Educational: A public, parochial, charitable or nonprofit college, university, other than trade or business school, including instructional and recreational uses with or without living quarters, dining rooms, restaurants, heating plants and other incidental facilities for students, teachers and employees.

56. Institution for Human Care: Residential facilities that provide on-site living and/or medical assistance for those unable to independently care for themselves such as a nursing home, an assisted living facility, a convalescent facility, or similar facility.

57. Junk: Scrap metals and their alloys, bones, used materials and products such as rags, cloth, rubber, rope, tinfoil, bottles, lumber, wastepaper, boxes, crates, old tools, machinery, fixtures and appliances with negligible remaining utility, and other goods uneconomical to repair and unusable.

58. Junk Yard: A lot or part of a lot used for the storage, keeping, dismantling, abandonment or sale of junk, scrap metal, scrap vehicles or scrap machinery or parts thereof; buildings or premises where waste, discarded or salvage materials are bought, sold, stored or packed, including house wrecking storage yards and furniture, household equipment and used cars in operable condition with current State vehicle license plates or current registration are not included.

59. Kennel: The use of land or buildings for the purpose of selling, breeding, boarding or training animals other than farm animals; or the keeping of four (4) or more dogs over four (4) months old, or the keeping of six (6) or more cats over four (4) months old, or the keeping of more than five (5) dogs and cats.

60. Landbank: A process where land is set aside as green space and reserved for a future use.

61. Lot: A portion or parcel of land devoted to a common use or occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.
62. Lot, Area: The area of a horizontal plane bounded by the front, side and rear lot line of a lot, but not including any area occupied by dedicated alleys, streets, recorded lakes or rivers.
63. Lot, Corner: A lot fronting on two (2) or more streets at their intersection.
64. Lot, Depth: The mean horizontal distance between the front and the rear and the front lot lines, measured within lot boundaries.
65. Lot, of Record: A parcel of land designated as a lot on a plat or subdivision recorded or registered pursuant to the statutory provisions; a single tract of land located within a single block which, at the time of filing for an improvement location permit or a building or zoning permit, is designated by its owner or developer as a tract to be used, developed or built upon as a unit under single ownership.
66. Lot Width: The horizontal distance between the side lot lines measured at right angles to the depth.
67. Manufactured Home: A dwelling unit fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with Federal Manufactured Housing Construction and Safety Standards Code or Indiana Public Law 360, Acts of 1971, as promulgated by the Indiana Fire Prevention & Building Safety Commission; also refers to modular homes.
68. Massage: Any method of pressure on or friction against, or stroking, kneading, rubbing, person so registered or licensed is performing the services for which the registration or tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his behalf will pay money or give any other consideration or any gratuity therefore. However, massage as used in this ordinance shall not apply to the activity of any person who is registered or licensed by the United States Government or any agency thereof, by the State of Indiana or any agency thereof, by Delaware County or any agency thereof, by any city or town within Delaware County or any agency thereof, or registered or licensed by any statute or ordinance of the United States, State of Indiana, Delaware County or any city or town in Delaware County, while such license was issued and during the period of time said registration or license is in effect.

69. **Massage Establishment:** Any establishment having a source of income or compensation derived from the practice of massage as herein defined and which has a fixed place of business where any person, firm, association, or corporation engages in, or carries on any of the activities as defined in a massage.

70. **METEOROLOGICAL TOWER (Met Tower)** – Defined to include the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

71. **Microbrewery:** A facility that produces less than 15,000 barrels of fermented alcohol (beer, cider, mead, wine, or other similar beverages). Use may include a tasting room or may be in conjunction with a bar/tavern or restaurant. Copies of reports filed with the Alcohol and Tobacco Tax and Trade Bureau (TTB) shall be maintained to demonstrate, upon request of the County, that they have not exceeded the annual beverage production limit in any twelve (12) month period. Microbreweries may also be known as a brewpub.

72. **Microdistillery:** A facility that produces less than 10,000 barrels of distilled alcohol (spirits, liquor) per year. Use may include a tasting room or may be in conjunction with a bar/tavern or restaurant. Copies of reports filed with the Alcohol and Tobacco Tax and Trade Bureau (TTB) shall be maintained to demonstrate, upon request of the Town, that they have not exceeded the annual beverage production limit in any twelve (12) month period.

73. **Mobile Home:** A transportable dwelling unit larger than eight (8) feet in body width and longer than thirty-two (32) feet in body length and designed to be used as a yearround dwelling unit, built prior to June 15, 1976.

74. **Mobile Home Park:** An area of land upon which two (2) or more manufactured homes or mobile homes are harbored for the purpose of being occupied as principal residences and this includes all real and personal property used in the operation of the park. The area of land includes lots which may be leased, owned or otherwise contracted for where the lots are at least three thousand (3000) square feet in area but not necessarily of sufficient size to meet the required lot area for single family dwellings in a residence zone.

75. **Motel:** A building or group of buildings in which lodging is provided and offered to the public for compensation and catering primarily to the traveling public.

76. **Nonconforming Adult Use:** Any building, structure or land lawfully occupied by an adult entertainment business or lawfully situated at the time of passage of this ordinance or amendments thereto, which does not conform after the passage of this ordinance or amendments thereto with the regulations of this Ordinance.

77. **Nonconforming Use:** A use existing at the time of the enactment of this Ordinance that

does not comply with one or more of the Ordinance provisions.

78. Nursing Home: A home for the aged, convalescent, chronically ill or incurable persons except mental or alcoholic patients in which three (3) or more persons are received, kept and provided with food and shelter for compensation.

79. Outdoor Advertising: A business providing outdoor displays or display space on lease or rental basis.

80. Open Porch: A porch open on three (3) sides except for wire screening. A porch shall not be considered open if enclosed by either permanent or detachable glass sash.

81. Parking, Lot: A parcel of land devoted to parking spaces for four (4) or more motor vehicles for compensation or otherwise, having an all-weather surface, enclosed or unenclosed, connected to a street and providing satisfactory ingress and egress for customers.

82. Parking, Space: A parking space for one vehicle consisting of a minimum one hundred sixtytwo (162) square feet in area.

83. Private School: An accredited nonpublic school, private or parochial, that is determined to be in compliance with the standards for the recognition of nonpublic schools as set by the Indiana State Board of Education.

84. Public Building: Any structure, edifice, or building, regardless of location, held, used or controlled for public purposes by any department or branch of government, state, county, or municipal, without reference to the ownership of the building or of the realty upon which it is situated.

85. Public Land: Any real estate in which any governmental organization or entity has a legal, or equitable, interest. This term shall not include any public streets, highways, roads or alleys since these terms are included in the definition of "Street" and "Alley".

86. Public Use Recreational Area: A use of land owned by any federal, state or local governmental entity, or a nonprofit entity, which is operated to attract the public and allow them to congregate for significant periods of time for recreational purposes such as parks, campgrounds, and nature preserves. Road right-of-way, parking areas, recreational trails and any other area used by the public as a passageway or temporary parking area is not considered a public use recreational area.

87. Public Water Supply Well: Any well that provides water to the public through a water distribution system that serves at least twenty-five (25) persons per day for drinking, domestic use or other purposes, or that has at least fifteen (15) service connections.

[State definition 327 IAC 19-2-36]

88. Recreational Vehicle: Any portable vehicular structure not built to the National Manufactured Housing Construction and Safety Standards Code, designed to provide temporary living quarters for recreational, camping or travel use, including but not limited to travel trailers, collapsible trailers, truck campers, motor homes and multiuse vans; they are intended for temporary residential uses and shall be occupied only in RV parks.

89. Regulated Drain Tile: A drainage tile under the jurisdiction of the Delaware County Drainage Board; also known as a legal drain tile.

90. Religious Institution: A church, chapel, temple, synagogue, convent, seminary, monastery, nunnery, rectory, parsonage, parish houses and like facilities related to the conduct of religious worship.

91. Sensitive Area: Sites where conditions pose a specific water quality threat to one or more of the following:

- a. Public water supply wells
- b. Wellhead protection areas
- c. Drinking water supply reservoirs
- d. Areas requiring special protection such as wetlands (except for wetlands constructed for manure management), Karst terrain, critical habitat of an endangered species, public use recreational areas.

92. Services Involving Specified Sexual Activities or Display of Specified Anatomical Areas: As used in Adult Service Establishment, any combination of two or more of the following activities: a) the sale or display of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; b) the presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons; c) the operation of coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices to show images to five (5) or fewer persons per machine at anyone time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas; d) live performances by topless and/or bottomless dancers, gogo dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas; e) the operation of a massage establishment.

93. Sexual Activities: Sexual intercourse or deviate sexual conduct, real or simulated, exhibition of the uncovered genitals of a person in the context of, masturbation or other sexual activities, provocative, erotic, or suggestive dance which is intended to convey an erotic message. See also "Specified Sexual Activities".



94. Small Wind Energy System: Means a single-towered wind energy system that:  
Is used to generate electricity;  
Has a rated nameplate capacity of 100 kilowatts or less; and  
Has a total height of 150 feet or less.
95. Solar Array: An accessory system or device that is roof-mounted or ground-mounted with poles or racks used to collect radiant energy directly from the sun for use in a solar collector's energy transformation process.
96. Solar Collector: A device, structure, or part of device, the substantial purpose of which is to transform solar energy into thermal, mechanical, chemical, or electrical energy.
97. Solar Farm: A group of interconnected solar panels/arrays for the primary purpose of wholesale or retail sales of generated electricity, including all equipment and facilities necessary for the proper operation of the facility such as electrical collection and transmission lines, transformers, substations, energy storage containers, and operation or maintenance facilities, collectively referred to as solar farm structures.
98. Specified Anatomical Areas: Any of the following: a) less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.
99. Specified Sexual Activities: Any of the following: a) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; c) fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts; d) flagellation or torture in the context of a sexual relationship; e) masochism, erotic or sexually oriented torture, beating or the infliction of pain; f) erotic touching, fondling or other such contact with an animal by a human being; g) human excretion, urination, menstruation, vaginal or anal irritation as part of or in connection with any of the activities set forth in "a" through "f" above.
100. Street: A public rightofway not less than fifty (50) feet in width unless otherwise required in the Official Thoroughfare Plan for the County of Delaware, Indiana; the rightofway established in a recorded plat to provide the principal means of access to abutting property; a public rightofway open to the general public.
101. Story: That portion of a building included between the surface of any floor and the surface of the floor next above it; or if there be no floor above it, the space between any floor and the ceiling next above it. A basement shall be counted as a story for height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five (5) feet, or if used for dwelling or business purposes.
102. Surface Waters of the State: A lake, reservoir, marsh, waterway or other water under

public ownership, jurisdiction or lease.

103. Total Height: Means the vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point.

104. Wind Energy System: Means equipment that converts and then stores or transfers energy from the wind into usable forms of energy. This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, guy wire or other component used in the system.

105. Wind Energy System Owner: Shall mean the individual that owns, or intends to own, the property upon which he/she will operate a Small Wind Energy System that will be operated in accordance with this Ordinance.

106. Wind Generator: Means blades and associated mechanical and electrical conversion components mounted on top of the tower.

107. Wind Tower: Means the monopole, freestanding, or guyed structure that supports a wind generator.

108. Yard: A space on the same lot with a main building, open, unoccupied and unobstructed by structures.

109. Yard, Front: An open, unoccupied space on the same lot with a building, extending the full width of the lot and situated between the street rightofway line and the front line of the building projected to the sidelines of the lot.

110. Yard, Rear: A yard extending across the full width of the lot between the rear of the main building and the rear lot line, the depth of which is the least distance between the rear lot line and such main building.

111. Yard, Side: A yard between the main building and the side lot line, extending from the front yard to the rear yard, the width of which is measured horizontally at ninety (90) degrees with the side lot line.