

11.1 IMPROVEMENT LOCATION PERMIT

A. Permits Required

No building or other structure shall be erected, moved, added to, or structurally altered without an Improvement Location Permit issued by the Zoning Administrator or its staff in accordance with Commission policies and procedures. No Improvement Location Permit shall be issued by the Zoning Administrator or its staff except in conformity with the provisions of this Ordinance, unless by written order from the Board of Zoning Appeals in the form of an administrative appeal review, special exception, or variance as provided by this Ordinance.

B. Application for an Improvement Location Permit

All applications for Improvement Location Permits shall be accompanied by plans accurately drawn, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Advisory Plan Commission or its staff to determine conformance with and provide for the enforcement of this Ordinance including: existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and building setback distances from property lines. The approved plans shall be retained by the Commission.

C. Expiration of Permits

1. Initiation of Work:

If the work described in any Improvement Location Permit has not begun within ninety (90) days from the date of issuance thereof, said permit shall expire; it shall be canceled by the Commission or Zoning Administrator, and written notice thereof shall be given to the persons affected. The Zoning Administrator may give a one-time extension for up to ninety (90) days for work completion.

2. Completion of Work:

If the work described in any Improvement Location Permit has not been completed within two (2) years of the date of issuance thereof, said permit shall expire and be canceled by the Commission or Zoning Administrator and written notice thereof shall be given to the persons affected, together with notice that future work as described in the canceled permit shall not proceed unless and until a new Improvement Location Permit has been obtained.

The Zoning Administrator may give a one-time extension for up to six (6) months for work completion.

D. Construction According to Plans

Improvement Location Permits issued on the basis of plans and applications approved by the Commission or its staff authorize only the use, arrangement, and construction set forth in such approved plans and applications; and any other use, arrangement, or construction not authorized shall be deemed as a violation of this Ordinance.

E. Schedule of Permits

The City of Nappanee hereby requires that an Improvement Location Permit be obtained for the following:

1. All residential dwellings
2. Mini barns (without foundation)
3. Other detached residential accessory buildings (with foundation)
4. Detached and attached garages and carports
5. Signs
6. Swimming pools
7. All commercial, industrial, and institutional buildings
8. Structures other than buildings (including satellite dishes, towers, antennas)
9. Conversions of occupancy classification (as per State Building Code)
10. Manufactured or mobile homes
11. Parking lots
12. Any exterior construction that adds to or alters the existing host structure

F. Schedule of Petition

1. The City of Nappanee hereby requires that a formal petition and filing fee be submitted for the following:
 - Zoning Amendments (zoning map change)
 - Variances (dimensional or use)
 - Special Exceptions
 - Subdivision Plats
 - Administrative Appeals
 - Non-Subdivided Site Development Plans
2. Any petition submitted to the Plan Commission or the Board of Zoning Appeals shall contain, in addition to the legal description of said property, a statement of the common address or general location description, whichever is appropriate, as well as a site location map showing the precise boundary lines and dimensions thereof.

11.2 CERTIFICATE OF OCCUPANCY

- A It shall hereby be declared unlawful and in violation of the provisions of this Ordinance for any builder or property owner to allow any structure to become occupied or utilized prior to the following
1. Passing a final inspection; and
 2. Receiving a Certificate of Occupancy from the City of Nappanee.
- B. In any case involving a new or remodeled structure for which an Improvement Location Permit has been issued, or any change in use of an existing structure or property, property owners shall submit an application for a Certificate of Occupancy to the Zoning Administrator. Upon review of this application and completion of any required inspection(s), the Zoning Administrator shall issue the applicant a Certificate of Occupancy if it is determined that the property and/or structure is in conformance with the provisions of this Ordinance.
- C. In cases involving only a change in use of an existing structure or property, an inspection of the property may not be required. Such a decision is at the discretion of the Zoning Administrator.

- D. For the purpose of this paragraph, the term "builder" shall mean the person or firm who obtained the Improvement Location Permit.
- E. The penalty for such a violation shall be as provided in Section 11.6 of this Ordinance.

11.3 SPECIAL EXCEPTIONS

- A. A special exception may be permitted if an application for such use is approved by the Common Council after referred to the Board of Zoning Appeals. Only the special uses listed in the appropriate zoning district (see Table A in Section 4.6 of the Zoning Ordinance) may be considered for approval as a special exception. Approval of the special exception shall run with the property; however, approval of the special exception shall be voided if the use is discontinued or abandoned for more than one (1) year. Any change to a different special exception shall require a new petition and hearing.
- B. The granting of a special exception is unnecessary for a use that existed on the date of this ordinance, or pertinent amendments to it were passed. Any expansion or enlargement of such existing use, however, shall require that the procedures set forth herein for the granting of a special exception be followed.
- C. A use authorized by special exception may not be expanded, extended, or enlarged unless reauthorized by the Board under the procedures set forth herein for the granting of a special exception.
- D. An application for approval of a special exception must be filed with the Zoning Administrator. The application must consist of at least the following:
 - 1. Name, address, signature, and telephone number of the owner of the property, and name, address, signature, and telephone number of any person (s) holding options on the purchase of the property for the intended special use.
 - 2. Legal description and common address of the property being considered.
 - 3. Identification of the proposed special use and all accessory uses or structures, with square footage and height listed.
 - 4. Current zoning of the property.
 - 5. Required number of parking spaces and number of spaces to be provided.
 - 6. A site plan drawn to scale or with sufficient dimensions labeled to determine size, showing at least the following: property lines, surrounding streets and alleys, surrounding land uses, location of all existing and proposed buildings, location of parking and drive areas, building and parking setbacks, utilities, and any landscaped or buffer areas.
- E. The Common Council may not take action to permit or refuse to permit any special use until after the matter has been referred to the Board of Zoning Appeals and said Board has held a public hearing and reported to the Common Council in writing. The Board shall hold a hearing and report its recommendation to the Common Council within sixty (60) days after formal reference to said Board of Zoning Appeals. If no such report is forwarded to the Council within sixty (60) days, the Council shall interpret this as a favorable report.
- F. In the event the report of the Board is averse to a proposed special exception referred to

it, the permit shall not be passed except by an affirmative vote of at least seventy-five percent (75%) of the members of the Common Council.

- G. In permitting special exceptions, the Board of Zoning Appeals may recommend, and the Common Council may establish appropriate conditions and safeguards as part of such permission and the same shall be made a matter of the records in the minutes of the Common Council and the Board of Zoning Appeals.
- H. A special exception may be terminated by the Board upon filing of an application therefor by an interested person, Board member, or Zoning Administrator, and upon finding at a public hearing, with notice to the property owner, that the terms of this Ordinance, or conditions of approval or specified commitments have not been complied with.

11.4 VARIANCES

- A. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Appeals unless and until a written application for a variance is submitted to the Zoning Administrator and the Board of Zoning Appeals containing:
 - 1. Name, address, and phone number of applicants;
 - 2. Legal description of property;
 - 3. Description of nature of variance requested;
 - 4. A narrative statement demonstrating that the requested variance conforms to each of the following standards:
 - a. The strict application of the terms of the Zoning Ordinance will constitute an unusual and unnecessary hardship as applied to the property for which a variance is sought;
 - b. The need for the variance arises from such condition peculiar to the property involved and does not exist in similar property in the same zone;
 - c. The use or value of the area adjacent to the property included in the variance will not be adversely affected; and
 - d. The variance will not be injurious to the public health, safety, morals, and general welfare of the community.
- B. The Board may grant a variance from the development standards (such as height, bulk, area) of the Zoning Ordinance if, after a public hearing on the application, it makes findings of facts in writing, that:
 - 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
 - 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - 3. The strict application of the terms of this Ordinance will result in a Practical Difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction on economic gain.
- C. If the Board grants the variance, it shall direct the applicant to apply for an Improvement Location

Permit. If such application complies with this Ordinance and all other applicable codes or ordinances, the Zoning Administrator shall issue the Improvement Location Permit for the use authorized by variance.

- D The Board may permit or require the owner of a parcel of property to make written commitment concerning the use or development of that parcel or may impose conditions upon that grant of variance.
- E A variance granted by a Board shall run with the parcel until such time as: (1) the use of the variance ends, or (2) the property conforms with the Ordinance as written.
- F Where an owner has failed to comply with any condition and/or commitment permitted or required by the grant of variance, a Board may authorize such action as it may deem appropriate to obtain compliance by the owner with the condition or commitment of the grant, or with the terms of this Ordinance in the same manner as if the variance had not been granted.

11.5 SCHEDULE OF FEES

- A The Plan Commission shall maintain the official schedule of fees, charges, and expenses and a collection procedure for permits, appeals, and other petitions pertaining to this ordinance. The schedule of fees shall be available to the public in the office of the Clerk-Treasurer and may be altered or amended only by resolution of the City Council.
- B Until all applicable fees, charges, and expenses have been paid in full, no final action shall be taken on any permit application, appeal, or petition.
- C Any person or persons who shall initiate construction of a structure prior to obtaining an Improvement Location Permit or any other required permit shall pay twice the amount of the current permit fee as established by the City Council.

11.6 ENFORCEMENT AND PENALTIES

- A The Board of Zoning Appeals by mandatory injunction in the circuit court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this Ordinance, or the removal of any use or condition in violation of this Ordinance.
- B A use that violates this Ordinance or duly made commitment shall be treated as if it were a common nuisance, and the owner or possessor of the structure, land, or premises upon which the use is maintained shall be liable for such nuisance.
- C Any person whether owner or possessor, who shall violate, or who permits or allows a violation, of any of the provisions of this Ordinance or duly made commitment, or who fails to comply therewith or with any requirements thereunder, or who shall build, reconstruct, or structurally alter any building in violation of any detailed statement or plan submitted upon which an approval or grant is given under this Ordinance, shall, upon complaint filed in any court of the county and upon judgment finding such violation, be fined not less than ten dollars (\$10.00) and not more than two thousand five hundred dollars (\$2,500.00), and each day that such violation or noncompliance exists shall constitute a separate violation.

11.7 EFFECT ON ANNEXATION OR VACATION OR ZONING

- A After the effective date of this Ordinance, areas annexed by the City of Nappanee shall be zoned

in the following manner:

1. Within sixty (60) days of the effective date of annexation, the Plan Commission shall submit to the legislative body a recommended plan for zoning the area.
 2. An Improvement Location Permit shall not be issued in an area annexed by the legislative body until a plan for zoning for the area has been adopted, provided, however, that such a permit may be issued for a single-family dwelling unit on a lot of record in a recorded subdivision, provided that all other provisions of the Ordinance are complied with.
- B. Whenever any street, alley, public way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the districts adjoining each side of the street, alley, public way, railroad right-of-way, or similar areas shall be extended automatically to the center of the vacation and all areas included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts. In the event of a partial vacation, the adjoining district, or district nearest the portion vacated, shall be extended automatically to include all of the vacated area.

11.8 EXCLUSION

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

11.9 ESTABLISHMENT OF AN HISTORIC PRESERVATION OVERLAY DISTRICT

- A. If it finds that an area of land is of historic and cultural significance and is suitable for preservation, the Common Council may establish such area by ordinance as an Historic Preservation Overlay District. In the absence of provisions to the contrary in the ordinance creating any such area, all regulations of the underlying district within such area is situated shall continue to apply, however, it is recognized that in order to preserve and protect historic areas, it may be necessary to regulate such areas with provisions different from those which would normally apply in the underlying district.
- B. Amendment to this Ordinance may be initiated by a request from the Common Council to the Historic Preservation Commission, or as a petition either by the Plan Commission, Historic Preservation Commission, or by the owners of at least 51 percent or more of the area involved in the petition. Petitions shall be filed with the Historic Preservation Commission and shall contain the necessary information as prescribed by the Historic Preservation Commission.
- C. Upon receipt by the Historic Preservation Commission, such Commission shall investigate the property which is the subject of such application and shall prepare a written report for the Plan Commission. At the next regularly scheduled public hearing of the Historic Preservation Commission, following the completion of this report, such application shall be considered by said Commission, which shall recommend to the Plan Commission either 1) that such application be approved as submitted or as modified by the Historic Preservation Commission, or 2) that such application be denied.
- D. The Plan Commission shall hold a public hearing according to the same procedures as a zoning amendment. Following such hearing, the Plan Commission shall recommend to the Common

Council either 1) that such petition be approved as submitted or as modified by the Plan Commission, or 2) that such petition be denied.

- E. Thereafter, the Common Council shall proceed with consideration of such proposed ordinance in the same manner and subject to the same voting requirements as would apply to a zoning amendment, provided that the Common Council may amend such proposed ordinance prior to its adoption in any manner it may deem necessary to accomplish the purposes of this Title.
- F. In areas adopted as a Historic Preservation Overlay District, no exterior portion of any structure or site (including walls, fences, light fixtures, steps, and pavements or other appurtenant features), nor utility structure, nor any sign shall be erected, altered, restored, moved, or demolished until an application for a Certificate of Appropriateness has been submitted to and approved by the Historic Preservation Commission. This shall not apply to any building or structure which the Building Commissioner or other official has determined to be a hazard to public safety.
- G. A Certificate of Appropriateness shall be filed in one of two ways: first, an application for a Building Permit, Demolition Permit, Sign Permit, or Moving Permit is automatically an application for a Certificate of Appropriateness; second, where no other permit is required, an application is made directly to the Historic Preservation Commission on the form prescribed by the Commission. The Commission will review the application and either issue a Certificate of Appropriateness or deny the application, stating in writing the reasons for such denial. Upon such denial, the applicant may appeal to the Common Council.
- H. In making its determination, the Historic Preservation Commission shall consider three (3) factors: first, appropriateness of the proposed work to the preservation of the building and district; second, the detriment to the public welfare if the proposed work is permitted even though it is not deemed appropriate; third, the potential hardship that the denial of the Certificate of Appropriateness would cause the applicant.
- I. Where the Historic Preservation Commission deems it necessary, the Commission may petition the Common Council for a temporary delay on proposed construction, reconstruction, alteration, demolition, or moving, for the purpose of preparing a Historic Preservation Plan for the building or district. Such a request shall be for a specified period of time and in no case shall the request exceed one (1) year.
- J. The Historic Preservation Commission may petition the Building Commissioner to use the legal means available to him to cause the maintenance and/or repair of any building or structure within the Historic District in accordance with the intent of this Ordinance.

11.10 ESTABLISHMENT OF A LOCAL LANDMARK

- A. The establishment of a local landmark may be approved by the Common Council upon recommendation of the Historic Preservation Commission and the Plan Commission. A petition to establish a local landmark may be initiated by the owner of the property involved or by petition of the Historic Preservation Commission, Plan Commission, or Common Council. The local landmark described may or may not be located within an existing or proposed Historic Preservation Overlay District.

11.11 ESTABLISHMENT OF A REGIONAL CORRIDOR OVERLAY DISTRICT

- A. If it finds that an area of land adjacent to a primary transportation corridor is of regional importance to transportation or commerce, as may be so designated by the Comprehensive Plan or any amendment thereof, State of Indiana, Regional Council of Governments, or other organization representing the regional welfare of the public, the Common Council may establish

- such area by ordinance as a Regional Corridor Overlay District. In the absence of provisions to the contrary in the ordinance creating any such area, all regulations of the underlying district within such area is situated shall continue to apply, however, it is recognized that in order to preserve and protect areas for future development or expansion of critical transportation facilities, it may be necessary to regulate such areas with provisions different from those which would normally apply in the underlying district.
- B. Amendment to this Ordinance for the purpose of creating a Regional Corridor Overlay District may be initiated by a request from the Common Council to the Plan Commission, or as a petition either by the Plan Commission or by the owners of at least 51 percent (51%) or more of the area involved in the petition. Petitions shall be filed with the Zoning Administrator and shall contain the necessary information as detailed in Section 10.9 herein.
 - C. Upon receipt of a petition from landowners, the Zoning Administrator shall investigate the property which is the subject of such application and shall prepare a written report for the Plan Commission. At the next regularly scheduled meeting of the Plan Commission, following the completion of this report, such application shall be considered by the Commission.
 - D. The Plan Commission shall hold a public hearing according to the same procedures as a zoning amendment. Following such hearing, the Plan Commission shall recommend to the Common Council either 1) that such petition be approved as submitted or as modified by the Plan Commission, or 2) that such petition be denied.
 - E. Thereafter, the Common Council shall proceed with consideration of such proposed ordinance in the same manner and subject to the same voting requirements as would apply to a zoning amendment, provided that the Common Council may amend such proposed ordinance prior to its adoption in any manner it may deem necessary to accomplish the purposes of this Title.
 - F. On properties existing within a Regional Corridor Overlay District, no variances shall be granted for any proposed improvements beyond the front building line, nor shall any structure or sign be erected, altered, restored, moved, or demolished until an application for a Certificate of Appropriateness has been submitted to and approved by the Plan Commission. This shall not apply to any building or structure which the Building Commissioner or other official has determined to be a hazard to public safety.
 - G. A Certificate of Appropriateness shall be filed in one of two ways: first, an application for a Building Permit, Demolition Permit, Sign Permit, or Moving Permit is automatically an application for a Certificate of Appropriateness; second, where no other permit is required, an application is made to the Zoning Administrator on the form prescribed by the Commission. The Commission will review the application and either issue a Certificate of Appropriateness or deny the application, stating in writing the reasons for such denial. Upon such denial, the applicant may appeal to the Common Council.
 - H. In making its determination, the Plan Commission shall consider three (3) factors: first, the general conformity of the proposed work with any proposals, plans, or policies in place for the future development of the corridor and adjacent land; second, the detriment to the public welfare if the proposed work is permitted even though it is not deemed appropriate; third, the potential hardship that the denial of the Certificate of Appropriateness would cause the applicant.