

Chapter 1

LEGAL PROVISIONS

1.01 Title: This Ordinance shall be known and may be cited hereinafter as the "Zoning Ordinance of the Town of South Whitley

1.02 Repeal of Previous Ordinance: The Town of South Whitley Zoning Ordinance and all subsequent amendments thereto, are hereby repealed effective coincident with the effective date of this Ordinance.

1.03 Purpose: As established by Title 36, Article 7, Chapter 4, Section 601 of the Indiana Code, the purpose of this Ordinance is to regulate and control the zoning of land and the consequent use of said land within the Town of South Whitley, Indiana, and its jurisdictional area, in order to secure adequate light, air, convenience of access; safety from fire, flood, and other danger, lessen or avoid congestion in public ways; and, promote the public health, safety, comfort, morals, convenience, and general welfare. To achieve these purposes, these regulations are specifically designed to:

- A.** Protect the character and stability of residential, recreational, commercial, industrial, and open space areas within the Town of South Whitley and promote their orderly and beneficial development.
- B.** Provide privacy and convenience of access to property.
- C.** Regulate the intensity of land use and establish open areas surrounding buildings and structures necessary to provide adequate light and ventilation, and to protect public safety and health;
- D.** Regulate and limit the height of buildings and structures.
- E.** Lessen and avoid congestion on public streets by providing for off-street parking and loading areas.
- F.** Regulate and limit the density of population based on the Town's ability to provide for water, sewerage, schools, parks, and other essential public services, buildings, or structures permitted within.
- G.** Divide the Town into zoning districts and establish by reference to a map, the boundaries of said districts.
- H.** Fix reasonable standards to which land, buildings, structures, and their uses must conform.
- I.** Prohibit uses, buildings, or structures which are incompatible with the character of development or uses, specified zoning districts

- J. Prevent illegal additions or alterations of existing buildings or structures.
- K. Protect against fire, explosion, noxious fumes, odors, heat, dust, smoke, glare, noise, vibration, radioactivity, and other nuisances and hazards, in the interest of the public health, safety, and welfare.
- L. Prevent the overcrowding of land and the undue concentration of buildings and structures so far as is possible and appropriate in each zoning district by regulating the land around them.
- M. Preserve and enhance the taxable value of land, buildings, and structures throughout the City and its jurisdictional area.
- N. Provide for the completion, restoration, reconstruction, or extension of non-conforming uses. (Please see Chapter 2)
- O. Designate and define the powers and duties of the official(s) administering and enforcing this Ordinance.
- P. Provide penalties for the violation of this Ordinance.

1.04 Interpretation, Conflict and Separability:

A. In their interpretation and application the provisions of these regulations shall be held to be the minimum requirements for the promotion of public health, safety, and general welfare.

B. Conflict with Public and Private Provisions

Public Provisions. The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, those provisions which are more restrictive or impose higher standards shall control.

Private Provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of these regulations, or the determinations of the Commission in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations

made thereunder. Private provisions can only be enforced privately unless a public agency such as the Plan Commission has been made a party to such agreements.

Separability. If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application.

1.05 Compliance with the Regulations: The regulations set by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

- A.** No building shall be erected, converted, placed, enlarged, reconstructed, or structurally altered, nor shall any building or land be used except for a purpose and in the manner permitted in the district in which the building or land is located.
- B.** No land required for yards, open spaces, or off street parking or loading spaces about an existing building or any building hereafter erected or structurally altered shall be considered as required yard or lot area for more than one building, unless otherwise provided for in this Ordinance.
- C.** Every building hereafter erected or structurally altered shall be located on a lot, and in no case shall there be more than one (1) principal commercial or residential building on one lot, except as otherwise provided in this Ordinance.
- D.** The provisions of these regulations shall be considered the minimum requirements for the promotion of the public health, safety, morals, comfort, and general welfare. Where the provisions of the regulations of this Ordinance impose greater restrictions than those of any other statute, ordinance, or regulation, the provisions of this Ordinance shall be controlling. Where the provisions of any other statute, ordinance, or regulation impose greater restrictions than this Ordinance, the provisions of such statute, ordinance, or regulation shall be controlling.
- E.** This Ordinance is not intended to abrogate or annul any easement, covenant, or other private agreement. However, where any provision of this Ordinance is more restrictive or imposes a higher standard or requirement than such easement, covenant, or other private agreement, the provisions of this Ordinance shall govern.

1.06 Jurisdictional Area: This Ordinance shall apply to all incorporated land within the Town of South Whitley, and the contiguous unincorporated land within the jurisdictional area zone map on file in the offices of the Town of South Whitley.

1.07 Effective Date: This Ordinance #01-04-01 was adopted by the Town Council for the Town of South Whitley, Indiana, at a meeting held on April 10, 2001.

1.08 Saving Provision: This ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing zoning ordinance, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the Town of South Whitley under any section or provision existing at the time of the effective date of this ordinance, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the Town of South Whitley except as shall be expressly provided for in this ordinance.

1.09 Exclusion: 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, the United States of America, or by their agencies.

1.10 Amendments: The Town Council shall have the authority to amend, supplement, change, modify, or repeal by ordinance the text or map of the Zoning Ordinance in accordance with the provisions of this Chapter.

Text Amendments (Rezoning): An application for an amendment to the written text of this Zoning Ordinance may be filed in the offices of the Town of South Whitley for consideration by the Plan Commission and the Town Council. Such application may be initiated by any member of the Town Board, or any member of the Plan Commission

Map Amendments (Rezoning): An application for a change in the zoning district designation as described by the Official Zoning Map, may be filed in the offices of the Town of South Whitley for consideration by the Plan Commission and Town Council. Such application may be files by any member of the Town Council, any member of the Plan Commission, any person with a financial, contractual, or proprietary interest in the property to be rezoned, or the owners of more than fifty percent (50%) of the area to be involved in the proposed zoning change.

A. Application and Submission Requirements for Amendments: The application shall be made upon a form provided by the Town of South Whitley Planning Commission. Said application shall be signed by the applicant and shall include:

1. Text Amendments: An application for a text amendment shall set forth the new text to be added, and any existing text to be deleted.

2. Map Amendments: An application for a map amendment shall include:

(a) A legal description for the property who's zoning designation is proposed to be changed.

(b) A scaled map of the property whose zoning designation is proposed to be changed, correlated with the legal description.

(c) A location map, locating the subject property within the neighborhood and community.

(d) The name and address of the property-owner.

(e) The petitioner's interest in the property, and if the petitioner is not the property-owner, the name and address of the petitioner and a written, notarized statement from the property-owner authorizing the petitioner to act as the owner's agent for the purposes of the rezoning application.

(f) The date of the filing of the application.

(g) The present and proposed zoning classifications and the reasons for the proposed change.

3. An application for either a text amendment or a map amendment shall comply with, and be in accordance with, the "INDIANA ELECTED MUNICIPAL OFFICIALS HANDBOOK" as adopted by the Town of South Whitley Plan Commission.

D. Fees and Costs for Amendments: In all cases where an application is initiated by a private party, the application shall be accompanied by the fee established by the Town Council and on file in the offices of the Town of South Whitley. Additionally, the applicant, on filing such an application, shall pay all costs and expenses associated with the application, whether or not the proposed amendment is enacted, including the drafting, advertising, and recording of the amendatory ordinance.

E. Approval Process for Amendments:

1. The Plan Commission: All such applications shall be referred to the Plan Commission for consideration and a report. The Plan Commission shall hold a public hearing, as required by law. Any such hearing may, for good cause shown, be continued from time to time at the request of the applicant or at the discretion of the Plan Commission.

(a) Certification of Action: Upon completion of the public hearing, the Commission shall approve, deny or send the application with no recommendation. A certification, in writing, of its action, together with its recommendation shall be transmitted to the Town Board.

(b) Approval of the Rezoning of a Portion of the Property: The Plan Commission may recommend, and the Town Board may approve, that an application for a change of a zoning district classification be approved for all, or only a portion of the property described in the application.

(c) Approval of a Different Classification: The Plan Commission may recommend, and the Town Board may approve, a zoning district classification other than the classification requested in the application as long as the recommended and approved zoning district is of the same "family" and of lower intensity. Example: Requested zoning district classification is "R-2," Plan Commission may recommend "R-1," but not "R-3" or commercial, industrial or other classification "family."

2. The Town Council: After receiving at the Plan Commission's certification on the proposed amendment, the Town Council may proceed to take action on the proposed amendment. At the first regular meeting after the proposed amendment is certified, the Town Council may adopt, reject, or amend the proposal.

(a) Adoption: If the Town Council adopts the proposal as certified by the Plan Commission, it takes effect as any other ordinance.

(b) Failure to Act: If the Town Council fails to act upon the proposal within ninety (90) days following the Plan Commission's certification, the action recommended by the Plan Commission in their certification shall automatically take effect.

(c) Rejection or Amendment: If the Town Council rejects the action recommended by the Plan Commission's certification, or amends the proposal contrary to the recommendation of the Plan Commission, the proposal shall be returned to the Plan Commission for its further consideration, with a statement of the Town Board's reasons for the rejection or amendment.

(1) If the Plan Commission approves the action of the Town Council, or fails to act within forty-five (45) days of the Town Council's report, the Town Board's action stands as passed by the Town Council, upon the filing of the Commission's report of approval, or the end of the forty-five (45) day period.

(2) If the Plan Commission rejects the Town Council's action, the original action of the Town Board stands only if confirmed by another vote of the Town Board within forty-five (45) days following the report of the Plan Commission's rejection. If the Town Board fails to confirm its original action within this forty-five (45) day period, then the action recommended in the Plan Commission's original certification on the proposed amendment takes effect.

3. Basis for Consideration and Action: In preparing and/or considering proposals to amend the Zoning Ordinance, the Plan Commission and the Town Council shall pay reasonable regard to:

[Taken from Section 603 of the Indiana Planning and Zoning Statute (I.C. 36-7-4-603).]

(a) The Comprehensive Plan.

(b) The current conditions and the character of current structures and uses in each district.

- (c) The most desirable use for which the land in each district is adapted.
- (d) The conservation of property values within the neighborhood and jurisdiction.
- (e) Responsible development and growth.

4. **Burden of Proof:** In assessing the relevance or acceptability of a proposed amendment, the burden of proof in justifying the request shall rest with the applicant, both before the Plan Commission and the Town Council.

5. **Withdrawal:** Any request for withdrawal of a legally filed application for an amendment to the Zoning Ordinance must be filed in writing and must be applied for prior to final action on the proposal by the Plan Commission.

F. **Reapplication for Amendments:** In the event that any application to amend the Zoning Ordinance is denied on final review by the Town Council, reapplication for the purposes of additional review of the same application shall not be accepted by the Plan Commission until twelve (12) months following the date of the final action on the original application has elapsed, unless it can be shown to the satisfaction of the Plan Commission that substantial new evidence, not available during the original review of the application, will be presented.

1.11 Administration and Enforcement of Provisions: This section contains the regulations pertaining to administration and enforcement of the provisions of this Ordinance, issuance of permits and certifications, inspection of property, and issuance of stop work, stop use orders, and enforcement of the provisions of this Ordinance.

A. **Designation of the Administrator.** The Town Board of South Whitley hereby designates the Plan Commission as the Administrator for the purposes of implementing this ordinance and has the principal responsibility for enforcing this ordinance. The Plan Commission shall have the following duties with respect to this Ordinance:

1. May designate one or more additional members of the Commission, as well as members of other Town departments who have a particular skill or competence, to act as its authorized representative.
2. Shall review and approve building permits.
3. Shall review and approve requests for occupancy or other appropriate permits.
4. May cause the cessation of any erection, construction, reconstruction, alteration, conversion, maintenance or use in violation of this Ordinance by issuing a stop work or stop use order.

5. May adopt such administrative policies as it deems necessary to the carrying out of its enforcement responsibilities, which policies shall have general applicability to cases of similar character.

6. May determine the actual location of a boundary line between zoning districts, where such line does not coincide with a property line or district boundary line. Such determination shall be subject to appeal before the Board of Zoning Appeals in accordance with Chapter 12.

7. May refer any violation of the Zoning Ordinance to the South Whitley Plan Commission Attorney for prosecution or other appropriate action when deemed necessary.

8. May exercise any other authority granted by the provisions of this, or any other Town ordinances.

B. Permits, Orders and Certifications:

1. Improvement Location/Building Permits (ILP/BP): It shall be unlawful to commence or to proceed with the erection, construction, major reconstruction, conversion, alteration, enlargement, extension, razing, or moving of any building or structure or any portion thereof; no new use, extension or alteration of an existing use, or conversion from one use to another, shall be allowed in any building, structure or land or part thereof, until issuance of a proper permit; except for the raising of agricultural crops, orchards or forestry, without first having applied in writing to the Department (Building Commissioner) for an ILP/BP (Improvement Location/Building Permit) to do so and an ILP/BP has been granted therefore. However, this requirement shall not be interpreted as including normal maintenance or minor repair of existing structures. Primary responsibility for securing the necessary permits shall be the property owner's.

However, if the property owner should contract part or all of the proposed work, it is the responsibility of the person or firm hired to ensure that all required permits and approvals have been secured prior to any work being initiated.

Blank forms shall be provided by the Department for the use of those applying for permits as provided in this Ordinance. Any permits issued by the Department shall be on standard forms for such purpose. There shall be a separate permit for each building or structure to be constructed, altered, or erected except for accessory buildings which may be included in the permit for the principal building when construction is simultaneous. Following issuance of the required permit, the applicant's copy shall be prominently posted at the site of the proposed work to the public view.

Any ILP/BP under which no construction work has been commenced within one year after the date of issuance of said permit or under which proposed construction has not been completed within eighteen months of the time of issuance shall expire by limitation. A new permit must be obtained before any further construction can occur. The new

permit will be issued on the basis of the entire original project, and fees assessed accordingly.

2. Voiding of ILP/BP: A permit may be revoked by the Department at any time prior to the completion of the building or structure for which the same was issued, or after the change of character of use, when it shall appear to the him that there is departure from the plans, specifications, or conditions as required under terms of the permit, that the same was procured by false representation, or that any provisions of this Ordinance are being violated.

Written notice of such revocation shall be served upon the owner, his agent, or contractor, or upon any person employed on the building or structure for which such permit was issued, via a stop-work order for construction, which shall be posted in a prominent location, or a certified letter citing the violation(s) for the character of use, and thereafter no such construction or use shall proceed in violation of this Ordinance.

3. Certificates of Occupancy: No building or structure or part thereof shall hereafter be constructed or altered until issuance of a proper ILP/BP. No building or structure or part thereof shall be occupied without issuance of a Certificate of Occupancy by the Building Commissioner.

4. Temporary Certificates of Occupancy: Pending the issuance of a regular Certificate of Occupancy, a Temporary Certificate of Occupancy may be issued by the Department for a period not exceeding thirty (30) days from the issuance of the Temporary Certificate of Occupancy, during completion if not deemed to endanger health or safety. Upon expiration of the original Temporary Certificate of Occupancy, one extension not exceeding thirty (30) days may be granted provided there remains no danger to health or safety.

5. Partial Certificates of Occupancy: Pending issuance of a regular Certificate of Occupancy, a Partial Certificate of Occupancy may be issued to allow use of completed portions of any new construction or alterations provided the area(s) for which the Partial Certificate of Occupancy is issued contain no circumstances or conditions which may endanger health or safety.

6. Certificate of Occupancy, Contents, Records: Certificate of Occupancy shall state that the building or proposed use of a building or land complies with all the building, health laws, and ordinances of South Whitley, and with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the South Whitley Town Clerk, and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building affected. No fee shall be charged for a certificate of occupancy.

7. Stop Work Orders: The cessation of any erection, construction, reconstruction, alteration, conversion, or maintenance in violation of this Ordinance may be effected by

posting a stop work order, stating the nature of the violation, to the owner of the property involved or to his agents or to the person doing the work.

8. Compliance with Permits and Certificates: Permits or Certificates issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 1.14 of this Chapter, herein.

C. Entry and Inspection of Land and Buildings:

1. The Building Commissioner or its authorized representatives, are hereby empowered, to the fullest extent of the law in performance of their assigned functions, to enter upon any land within the jurisdictional area of the Town of South Whitley for the purpose of making inspections, examinations, and surveys, or to place and maintain thereon monuments, markers, notices, signs, or placards in order to effect the provisions of this Ordinance. The above authorized person(s) shall be required to present proper credentials when entering upon any land or structure for the purpose of this Ordinance.

2. The Building Commissioner is authorized to inspect or cause to be inspected any building or other structure or any land on which work is in progress.

1.12 Fees, Charges, and Expenses: The Town Board shall establish a schedule of fees, charges, and expenses, and a collection procedure for building permits, Certificates, appeals, and other matters pertaining to the Ordinance. The schedule of fees shall be posted in the office of the South Whitley Town Clerk, and may be altered or amended with the approval of the Town Board. No permit, certificate, special exception, approval, or variance shall be issued unless or until such costs, charges, fees or expenses listed in this Ordinance have been paid in full, nor shall any action be taken on proceedings before the South Whitley Plan Commission or South Whitley Board of Zoning Appeals unless or until fees have been paid in full.

1.13 Complaints Regarding Violations: Any person may file a complaint whenever a violation of this ordinance occurs, or is alleged to have occurred. Such complaint shall be filed in writing with the Planning and Building Department and shall state fully the causes and basis of the complaint. The Planning and Building Department shall record such complaint properly, make a timely investigation and take action thereon as provided by this ordinance.

1.14 Violations and Penalties: It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, or maintain any structure in violation of any regulation in, or any provision of, this Ordinance, or of any regulation enacted hereunder. Uses of land and dwellings, buildings, or structures, including tents and manufactured homes and buildings used contrary to any provisions of this Ordinance, or any regulation enacted hereunder, are hereby declared to be a violation. Any person, firm, or corporation making

any attraction to real property within the City limits of South Whitley, or its zoning jurisdictional area, including, but not limited to driveways, fences, additions to homes and businesses, and any building activity regulated by City ordinance or code, who fails to secure the proper permits and/or use, shall be in violation of this Ordinance. Any structure or use that violates this Zoning Ordinance shall be deemed to be a common nuisance, and the owner of the structure or land shall be liable for maintaining a common nuisance.

A. It shall be the duty of the Department to enforce these regulations and to bring any violations or lack of compliance to the attentions of the City Attorney who may file a complaint against the person and prosecute the alleged violation.

B. Any person may, by suit in a circuit OR superior court of the county, enjoin the violation of this Ordinance.

C. The South Whitley 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 permitted in violation of this Ordinance.

D. A use that violates this Ordinance 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.

E. Anyone violating any of the provisions of this Ordinance, or of any regulation enacted hereunder, shall, upon conviction thereof, be subject to a fine of not less than five hundred dollars (\$500.00). Each day that a violation continues shall constitute a separate offense.

In addition to the penalties herein above authorized and established, the City Attorney shall take such other actions at law or in equity as may be required to remove, or otherwise eliminate any violations of this Ordinance. (In cases of conflict of interest, overburdening of activities, etc., the Attorney or any other attorney may be used in conjunction with or in place of the Town Attorney.)

F. No Improvement Location Permit or Building Permit required under the Local Building Code, or this Ordinance, shall be issued on any property subject to this Ordinance in violation of the provisions of this Ordinance.

G. Attorney's Fees. Notwithstanding anything contained in this Ordinance to the contrary or appearing to be contrary, and in addition and supplementary to other provisions of this Ordinance, if the Board of Zoning Appeals or the South Whitley Town Council is required to utilize the services of the City Attorney or any other attorney in investigating a possible violation of this Ordinance or enforcing the provisions of this Ordinance pursuant to section 1.14.C, 1.14.D, 1.14.E, or any other Section, before any board or court (including appeals), and such investigation results in a determination that a

violation has occurred or if the Board of Zoning Appeals or the Town is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceeding, the respondent, defendant or party investigated for a violation shall pay the City's reasonable attorney fees and all costs related to the investigation of the violation and/or the enforcement of this Ordinance, unless such attorney fees or costs are specifically waived by the Town Council of South Whitley.

H. Cost on Appeal. As to any appeal from a decision of the Board of Zoning Appeals, costs may not be allowed against the Board of Zoning Appeals unless it appears to the Court that the Board acted with gross negligence or in bad faith in making the decision brought up for review.