

ORDINANCE # 2018-09

AN ORDINANCE AMENDING THE
WHITLEY COUNTY ZONING CODE

WHEREAS, pursuant to the requirements of Indiana Code 36-7-4-600 et seq., the Whitley County Advisory Plan Commission (the "Plan Commission") initiated an amendment to the Whitley County Zoning Code; and

WHEREAS, the Plan Commission held a public hearing, as prescribed by law, and have certified to the Board of Commissioners of Whitley County its findings and recommendations in writing concerning the proposed amendment; and

WHEREAS, the Board of Commissioners, upon certification by the Plan Commission of its favorable recommendation, considered and examined the proposed zone map change giving regard to the Comprehensive Plan, the current conditions and the character of current structures and uses in each district, the most desirable use for which the land in each district is adapted, the conservation of property values throughout the jurisdiction, and the responsible development and growth of Whitley County; and

WHEREAS, the Board of Commissioners of Whitley County deems it in the best interest of the community that such amendment to the zoning code be enacted;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF WHITLEY COUNTY, INDIANA, that the Code of Ordinances, Title XV, Chapter 153, be amended as follows:

Section 1. The first paragraph of Section 5.17, MS-02 is amended to read:

"For farm animals located on any parcel in the RR District or on any parcel 80,000 square feet (1.837 acres) and less in the AG District, a maximum of 1.25 animal units is permitted per acre of parcel area (prorated), as determined from the following chart. For parcels larger than 80,000 square feet in the AG District, no acreage standard for farm animals applies. A confined feeding operation must maintain not more than the number of animal units as prescribed for each use listed in the AG or AGP Districts as determined from the following chart. The number of animal units is cumulative over all applicable species at a location. The Zoning Administrator shall determine the required minimum acreage for farm animals listed and for any animals not listed, inclusive of any permitted non-farm animals."

Section 2. The following is added as a new Section 5.21:

5.21 **Confined Feeding Operations (CF)**

CF-01: These standards apply to any Confined Feeding Operation (CFO). A CFO is defined by 327 IAC 19-2-7, as may be amended.

CF-02: Classes of CFO. For purposes of this Ordinance, the following classes are established to describe CFOs. Animal units are as defined in Section 5.17, MS-02.

A. Class 1 CFO. The proposed animal count meets the definition of a CFO, and the number of animal units is up to and including 1,200.

B. Class 2 CFO. The proposed number of animal units is 1,201 to 3,000.

C. Class 3 CFO. The proposed number of animal units is 3,001 to 12,000.

D. Class 4 CFO. The proposed number of animal units is more than 12,000.

CF-03: Development Standards.

A. For Class 1, 2, and 3 CFOs, the following are minimum distances from CFO barns and manure storage facilities to:



1. Natural lakes of 40 acres in area or more..... 2,640'
 2. Recorded major residential subdivisions 1,320'
 3. Off-site residences 660'
 4. Open waterways, storm drain inlets..... 300'
- B. If the owner of an off-site residence or adjacent property records a deed restriction acknowledging the presence of a Confined Feeding Operation and waiving the required separation in (A) above, then the separation will not be required for that residence.
- C. For Class 2 CFOs proposed to be located within 2,640' of RR, MR, or LR zoning districts, the BZA during the Special Exception process shall consider and may impose conditions necessary for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects from the CFO, as appropriate for the site and surrounding area.
- D. For Class 3 CFOs proposed to be located within 2,640' of RR, MR, or LR zoning districts, the BZA during the Special Exception process shall impose conditions for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects from the CFO, as appropriate for the site and surrounding area.
- E. For Class 4 CFOs, these standards apply:
1. Minimum parcel size to construct a Class 4 CFO shall be 80 acres.
 2. The minimum distance from Class 4 CFO barns and manure storage facilities to:
 - a. Natural lake of 40 acres in area or more..... 5,280'
 - b. Recorded major residential subdivisions..... 2,640'
 - c. Off-site residence 1,320'
 - d. Property and right-of-way lines..... 600'
 - e. Open waterways, storm drain inlets 300'
 3. The BZA during the Special Exception process shall impose conditions for construction or installation of one or more buffering measures from the following list, as it deems most applicable to mitigate adverse effects from the CFO:
 - a. Existing natural buffers
 - b. Windbreaks, per NRCS 3 row guidelines
 - c. Odor control measures
 - d. Other measures of comparable ability to mitigate adverse effects
- F. The BZA shall require a traffic study and/or management plan for all Class 4 CFOs, and may require one for Class 2 or 3 CFOs.
- G. An approved IDEM permit shall be required prior to issuance of a building permit/improvement location permit for a CFO.
- CF-04: Expansions of existing CFOs.
- A. Notwithstanding the provisions of Section 9.3(A), any legally established CFO as of [date of ordinance adoption] shall be permitted to expand or increase in animal unit count even if the CFO would be nonconforming with the development standards set forth above.
 - B. The expansion shall not increase the nonconformity.
 - C. Applicable Special Exception and Rezoning requirements shall still apply.

Section 3. The following is added as a new Section 5.22:

5.22 Major Residential Subdivision Standards (RS)

RS-01: For purposes of this Ordinance, "Major Residential Subdivision" shall be defined as:

- A. An existing residential subdivision of three (3) lots or more; or
- B. A total of three (3) platted lots or more split from one parcel in existence as of [date of ordinance adoption] (cumulative) intended for residential use; or
- C. Subdivisions intended for residential use that include new streets (public or private)

RS-02: Development standards

- A. The minimum distance, as measured from the nearest boundary of the subdivision plat at the property line, from a new major residential subdivision to:
 1. Class 1 or 2 CFOs 1,320'
 2. Class 3 or 4 CFOs 2,640'
- B. If the owner of a CFO records a deed restriction acknowledging the presence of a subdivision within the above separations, then the separation shall not be required for that subdivision.
- C. Major residential subdivisions shall access to a paved public road.
- D. For major residential subdivisions proposed to be located within 2,640' of an existing Class 2, 3, or 4 CFO, the Plan Commission during the Preliminary Plat process shall impose conditions for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects to or from the subdivision, as appropriate for the site and surrounding area.

- E. A stormwater management plan shall be required for major residential subdivisions. Discharge of stormwater directly to drains without a water quality measure shall be avoided.
 - F. A traffic study and/or management plan may be required by the Plan Commission.
- RS-03: AGP Standards. All new residential subdivisions within 300 feet of an AGP zoned property must address as part of the Primary Plat the following:
- A. Off site surface drainage impacts
 - B. Subsurface tiling system impacts
 - C. Security of AGP zoned property from residential uses.
 - D. Subdivision plat notes and restrictive covenants on the property deeds holding harmless agricultural production in the AGP district when operating under normal practices.
- RS-04: Roadside Strip Subdivisions. To minimize driveway cuts and to maintain access to tracts of land to be used for development, the following shall apply:
- A. A 100 feet wide public road frontage (minimum) to access the parent tract shall be maintained per three (3) new parcels (platted or unplatted) that directly access an existing county road.
 - B. Subdivisions of ten (10) lots or more shall utilize internal streets for the majority of the lots.
- RS-05: Landscaping. Landscaping as stated below shall be required for all residential subdivision development prior to the issuance of a certificate of occupancy. Extensions of up to 180 days may be granted to take advantage of optimal planting conditions.
- A. Perimeter plant material. Perimeter plant material shall be provided on the perimeter of subdivision development when adjacent to a public way as follows:
 - 1. A 20-foot landscaping area adjacent to the road or right-of-way. The landscaping shall be located in an area designated as a landscaping easement or common area. All attempts should be made to avoid conflicts with drainage and utility easements that would prevent the installation of landscape materials in accordance with the ordinance.
 - 2. Trees shall be provided at a minimum rate of six trees per 100 lineal feet of perimeter planting. Perimeter plantings shall be a roughly equal mix of deciduous canopy trees and evergreen trees.
 - 3. Tree calculations shall be prorated and rounded up to the nearest whole number for every foot over the initial 100 feet. Existing trees located within 50 feet of the perimeter road may count toward the requirement.
 - B. Individual lots. For single-family lots, a minimum of three deciduous shade trees shall be planted in the front or side yards of the lot. Existing trees retained in the front or side yards may count toward this requirement.
 - C. For the purposes of this subsection, deciduous trees shall be a minimum of 1.5" caliper in size and evergreen trees a minimum of 6 feet in height at the time of planting. In order for existing trees to count toward the minimum requirement, deciduous trees must be a minimum size of two-inch caliper and evergreens must be at least 7' in height.
- RS-06: Street interconnectivity. To provide linkages between developments, in all subdivisions there shall be a plan for vehicular connections into undeveloped tracts or parcels of land submitted as part of a subdivision primary approval. Streets designed for future extensions shall be have public right-of-way platted to the subdivision property line so as not to create future right-of-way takings or purchases upon extension. A barricade shall be installed on the extension to prevent accidental passage into undeveloped areas.
- RS-07: Pedestrian access. To encourage a pedestrian network in the county, subdivisions shall include trails and/or sidewalks.
- A. For major residential subdivisions, public sidewalks shall be constructed by the builder/lot owner at the time of construction of the residence. All sidewalk design and construction shall comply with the Americans with Disabilities Act (ADA), as amended, and the Whitley County Highway Specifications. Maintenance and repair of the sidewalks shall be the responsibility of the lot owner or homeowners association.
 - B. For major residential subdivisions with average lot areas of 80,000 sq. ft. or greater, a trail network that serves the lots in the subdivision may be proposed in lieu of sidewalks.

Section 4. Section 10.6, Notice Requirements, Paragraph C is amended, and a new paragraph D is added to read as follows:

- C. Certification of Notice to Adjacent Property Owners. The petitioner shall cause notification of said hearing to all property owners of record of all land adjoining the area included in the petition to a depth of two (2) property ownerships, or 660 feet, whichever is less, from the property lines of the area included in the petition. Adjacent property will include those properties across roads since roads are not considered a barrier. This notification can be by certified mail, with the green cards submitted for the file, or by certificate of mailing, with the postmarked certificate of mailing submitted for the file. In any case, the notification to all

adjacent property owners must be accomplished no less than ten (10) days prior to the meeting at which the petition is being heard.

- D. **On-site Notice.** The Petitioner shall place a notice of the public hearing on the property included in the petition at least ten (10) days before the date of the hearing. The notice shall remain on-site until final action on the petition has been taken. The on-site notice shall consist of a sign to be provided by the Board Staff. The sign must be placed on the subject property within five (5) feet of the right-of-way line of the public road adjacent to the property. For properties with more than one road frontage, the sign must be placed adjacent to the road deemed by the Board Staff to have a higher traffic volume. The sign text must be visible from the public road. The Board Staff may require additional notices to be posted for properties with more than one road frontage and/or those properties with greater than 600 feet of road frontage, at a reasonable rate as determined by the Board Staff.

Section 5. Section 10.9, subsection A(5) is amended to read:

“the special exception shall preserve the purpose of this Ordinance as stated in Section 1.4.”

Section 6. Section 10.19, subsections “Notice” and “Evidence of Notice” are amended to read as follows:

Notice

Method of Notice. The petitioner shall cause notification of said hearing to all property owners of record of all land adjoining the area included in the petition to a depth of two (2) property ownerships, or 660 feet, whichever is less, from the property lines of the area included in the petition. Adjacent property will include those properties across roads since roads are not considered a barrier. The petitioner shall also cause due notification to any property owners involved within the petitioned area. This notification can be by certified mail, with the green cards submitted for the file, or by certificate of mailing, with the postmarked certificate of mailing submitted for the file. In any case, the notification to all adjacent property owners and completion of the certification form must be accomplished no less than ten (10) days prior to the meeting at which the petition is being heard.

On-site Notice. The Petitioner shall place a notice of the public hearing on the property included in the petition at least ten (10) days before the date of the hearing. The notice shall remain on-site until final action on the petition has been taken. The on-site notice shall consist of a sign to be provided by the Commission Staff. The sign must be placed on the subject property within five (5) feet of the right-of-way line of the public road adjacent to the property. For properties with more than one road frontage, the sign must be placed adjacent to the road deemed by the Commission Staff to have a higher traffic volume. The sign text must be visible from the public road. The Commission Staff may require additional notices to be posted for properties with more than one road frontage and/or those properties with greater than 600 feet of road frontage, at a reasonable rate as determined by the Commission Staff.

Evidence of Notice

Affidavit of notice to adjacent property owners must be notarized to the considered evidence. Certified mail receipts or postmarked certificate of mailing shall be considered as proof of proper notification.

Section 7. The following is added as Section 12.2(B)(2)(h):

“(For new residential dwellings only) an Agricultural Use notice signed by the property owner.”

Section 8. The following is added as a new Section 12.4:

12.4 Zoning Information Program

In order to provide accurate information for incoming residents and land owners, the Planning Office shall develop a zoning information program. The Office shall make available to local real estate agents, realtors, title companies, and others involved in the real estate transfer process an information sheet regarding the zoning district, subdivision information, agricultural use notification, right-of-farm information, county official contact information, and the like. Such sheet will be completed with appropriate information and provided to purchasers of property within the County.

Section 9. An amended Chapter 3 is attached and incorporated herein by reference.

Section 10. This Ordinance shall be in full force and effect from and after its passage and after the occurrence of all other actions required by law.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF WHITLEY COUNTY,
INDIANA, ON THIS 19 DAY November, 2018.

ATTEST:

Jana R. Schinbeckler
Jana Schinbeckler, Auditor

George Schrupf
George Schrupf

Don Amber
Don Amber

Tom Western
Tom Western

