

**Chapter**

# 20.09

## Processes, Permits and Fees

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City of Bloomington  
Unified Development  
Ordinance

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# General Requirements

## 20.09.010 Purpose

This chapter identifies the types of permits, approvals, and processes which are required as part of this Unified Development Ordinance.

## 20.09.020 Enforcement

Failure to comply with any provision of *Chapter 20.09: Processes, Permits and Fees*, including but not limited to failure to comply with the terms and conditions of any permit or other approval obtained hereunder, shall be a violation of the Unified Development Ordinance and shall be subject to the penalties and remedies in *Chapter 20.10: Enforcement and Penalties*.

## 20.09.030 Applications; General

### (a) Application Requirements:

- (1) Applications for any petition, permit, or process under this Unified Development Ordinance may be made by the owner or lessee of property within the City or its zoning jurisdiction. In addition, the owner of at least fifty percent (50%) of the land involved may initiate a zoning map amendment for that land. The Plan Commission and/or Common Council may also initiate action as prescribed by Indiana Code and other applicable laws.
  - (2) Applications for any petition, permit, or process under this Unified Development Ordinance shall include the information listed below. Submittals may be composed of one or more sheets and drawings and shall include:
    - (A) A completed Application Form. Forms are available in the Planning and Transportation Department;
    - (B) Name and address of the applicant;
    - (C) Name and address of the property owner;
    - (D) Signed, written consent of owner if other than applicant;
    - (E) Required application fee;
    - (F) Accurate street address of the subject property. If property does not have a street address, a request must be made by the petitioner to the Planning and Transportation Department for an address prior to application;
    - (G) Accurately scaled map showing location of property and the existing uses of land within two hundred (200) feet of the subject property. This map may be provided by the staff as a geographic information system (GIS) map showing the required information without additional charge over the application fee;
    - (H) Narrative description of the proposal;
    - (I) Specific material required under the applicable permit or process in *Chapter 20.09: Processes, Permits and Fees*;
    - (J) Specific material to address the requirements of *Chapter 20.05: Development Standards* and *Chapter 20.07: Design Standards*; and
    - (K) Such other additional information as may be required by the staff or approval body to evaluate the application.
- (b) Completeness of Application: The staff shall determine whether an application is complete prior to accepting the application. If the application is incomplete, the staff shall inform the applicant as to what additional information must be supplied. No application shall be considered complete until all pre-application requirements of *Section 20.09.070: Pre-application Requirements* have been satisfied and all required fees have been paid.
- (c) Joint Submission of Applications: Whenever an application requires review under the provisions of more than one permit, approval, or process, the staff may schedule the review procedures and hearings so that review for each different permit, approval, or process can be scheduled on the same agenda, to the extent possible.
- (d) Planning and Transportation Department Application Review: All applications for permits, approvals, or processes required by this chapter shall be reviewed by the staff, which shall either be charged with the issuance or denial of a Certificate of Zoning Compliance or other staff-level approval, or to prepare a report for the applicable public hearing body.
- (e) Authorization of Site Inspection: By submitting an application, the applicant is authorizing the staff to inspect the site being considered for development at any reasonable time to obtain the information required for review of compliance with this Unified Development Ordinance.

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- (f) Filing Deadline: The petitioner shall refer to the schedule of meeting dates attached to the application form to determine any applicable filing deadlines for approvals or processes by the Plan Commission, Board of Zoning Appeals, Plat Committee, or Hearing Officer.
- (g) Complete Submittal: For petitions and subdivision requests, once the staff has determined that the petitioner has made a complete submittal, the staff shall:
  - (1) Assign the item a case number;
  - (2) Place the item on an agenda of the appropriate body;
  - (3) Inform the petitioner of the time, date, and place of the review body meeting.

## 20.09.040 Effect of Permit or Approval; Applicant to be Bound by Submissions

- (a) Recipient to be Bound: A recipient of any permit or other approval under *Chapter 20.09: Processes, Permits and Fees* or under any other provision of this Unified Development Ordinance shall be bound by the representations and information submitted in the original application and in any revision, amendment, or supplement to the original application that is provided to the reviewing authority prior to issuance of the permit or other approval (hereinafter “submission”) except with respect to any detail that is clearly neither regulated by a provision of this Unified Development Ordinance or other applicable law or regulation, nor expressly required as a commitment or condition of approval by the reviewing authority. A permit or approval shall be deemed to incorporate and be conditioned upon such submission, and a new or modified permit or other approval shall be required for any significant deviation from any detail contained in such submission that is made a part of the permit or other approval by operation of *Section 20.09.040 Effect of Permit or Approval; Applicant to be Bound by Submissions* or otherwise.
- (b) Special Rule in Demolition Delay Situations: In the case of a permit or other approval authorizing any work that includes partial demolition governed by the demolition delay waiting period of *Section 20.09.230: Demolition and Demolition Delay*, the submission to which the recipient shall be bound shall include all information required by *Division 20.09.120(d)(6)* of this Unified Development Ordinance, and shall be as defined in *Subsection 20.09.040(a): Recipient to be Bound* above, except as it may be modified as follows: where the application for such permit or approval has been placed on the agenda for and discussed at one or more public meetings of the HPC, then for purposes of this provision the information and representations placed before the HPC at the last of those meetings prior to permit issuance, together with any modifications recommended by the HPC and agreed to by the applicant, shall become a part of the submission upon the basis of which a permit or other approval may be issued, and to which the recipient of the permit or approval shall be bound, unless the permit or approval is thereafter properly modified or a new permit or approval issued. Notwithstanding any other provision of this Unified Development Ordinance, issuance of a permit or other approval that is subject to this provision shall not authorize any work that significantly deviates in any detail from the elevations and the design, type and location of materials depicted in such submission.

## 20.09.050 Notice Requirements

Whenever a public hearing is required by this Unified Development Ordinance or by State law, notice of the hearing shall be given in the following manner:

- (a) Publication:
  - (1) The staff shall be responsible, at petitioner’s expense, for publishing notice pursuant to the Plan Commission or Board of Zoning Appeals Rules of Procedure.
  - (2) Notice shall be published in a daily newspaper of general circulation within the planning jurisdiction at least ten (10) days prior to the public hearing, in accordance with IC 5-3-1: Publication Procedures.
- (b) Notice to Interested Parties: Whenever required by this Unified Development Ordinance or by State law, notice shall be sent to interested parties in accordance with *Chapter 20.09: Processes, Permits and Fees* or with the Rules of Procedure adopted by the Board of Zoning Appeals or Plan Commission. The Rules of Procedure shall specify who are interested parties in each case, how notice is to be given to them, and who is to give that notice.
- (c) Mailed: The petitioner shall be responsible for mailing notice pursuant to the Plan Commission or Board of Zoning Appeals Rules of Procedure.

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- (d) Posted: The petitioner shall be responsible for posting notice on site pursuant to the Plan Commission or Board of Zoning Appeals Rules of Procedure.
- (e) Proof: The petitioner shall be responsible for returning proof of mailed notice to the Planning and Transportation Department. The petitioner shall refer to the application form to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline shall result in the petition's being continued to the Plan Commission or Board of Zoning Appeals agenda for the following month.

## 20.09.060 Public Hearing Procedures

Whenever a public hearing is required by this Unified Development Ordinance or by State law, the following public hearing procedures shall apply:

- (a) Setting the Hearing: When the staff determines that an application is complete and that a public hearing is required, the staff shall place the item on the next agenda with space available pursuant to the Rules of Procedure of the Plan Commission or the Board of Zoning Appeals.
- (b) Examination of Application and Other Documents: Upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the offices of the Planning and Transportation Department.
- (c) Attendance: The petitioner is required to be present at the public hearing to address and discuss comments and concerns posed by the review body. Failure to appear shall result in the petition's being dealt with as outlined in the review body's Rules of Procedure.
- (d) Conduct of Public Hearing:
  - (1) *Rights of All Persons*: Any person may appear at a public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing may be required to identify himself or herself, state an address, and if appearing on behalf of an organization, state the name of the organization.
  - (2) *Due Order of Proceedings*: Hearings shall be conducted pursuant to rules adopted by the hearing authority in accordance with Indiana Code.
  - (3) *Continuance of Public Hearing or Meeting*: The body or officer conducting the public hearing or meeting may continue the public hearing or meeting to a fixed date, time and place without additional publication or individual notice.
  - (4) *Withdrawal of Application*: An applicant shall have the right to withdraw an application at any time prior to action on the application by the decision-making body or officer.
  - (5) *Record of Public Hearing or Meeting*: The transcript of testimony, minutes, applications, petitioner's statements, exhibits, staff reports, and the decision of the decision-making body shall constitute the record. The record shall be maintained for public inspection in the Planning and Transportation Department.
- (e) Actions by Decision-making Bodies and Officers: All decisions shall include a brief summary of the matter being acted upon, and a clear statement of approval, approval with conditions, or disapproval. Conditions of approval shall be clearly stated and enumerated.
  - (1) *Action by Board of Zoning Appeals*: Action by the Board of Zoning Appeals shall be final.
  - (2) *Action by Plan Commission*: In the instance where the Plan Commission has final authority, action by the Plan Commission shall be final. When the Plan Commission action is advisory to the Common Council, the Planning and Transportation Director shall certify the Plan Commission recommendation to the Common Council pursuant to IC 36-7-4: Local Planning and Zoning. When the Plan Commission action is advisory to any other body or agency, the staff shall forward such recommendation to that body or agency.
  - (3) *Action by Common Council*: The Common Council shall act on any petition forwarded by the Plan Commission within the time period specified and in the manner set forth in IC 36-7-4: Local Planning and Zoning. Additionally, the Mayor may exercise his or her authority to veto an action of the Common Council pursuant to *Section 2.04.350: Veto Procedure* of the Bloomington Municipal Code. The Common Council may override a mayoral veto pursuant to *Subsection 2.04.350(d)* of the Bloomington Municipal Code.

# General Requirements

## 20.09.070 Pre-application Requirements

Whenever a public hearing is required by this Unified Development Ordinance or by State law, the following pre-application requirements shall apply:

- (a) **Pre-application Meeting:** Prior to submitting a petition application, the petitioner shall meet with the staff to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The staff shall aid and advise the petitioner in preparing the application and supporting documents as necessary. This meeting must take place prior to the deadline as listed on the Schedule of Meeting Dates.
- (b) **Development Review Committee (DRC):**
  - (1) **Determination:** All development petitions requiring Plan Commission action shall be forwarded to the Development Review Committee (DRC) for consideration. In addition, the staff may forward certain petitions requiring Board of Zoning Appeals or Plat Committee review to the DRC. The staff shall inform the petitioner of the time, date, and place of the Development Review Committee meeting.
  - (2) **Meeting Date:** The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Review Committee. Incomplete submittal information may result in the application being postponed from the Development Review Committee agenda to allow the petitioner time to complete the submittal.
  - (3) **Revisions:** Following Development Review Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Review Committee.
- (c) **Neighborhood Meeting:** The petitioner shall conduct a neighborhood meeting prior to filing a petition to rezone a site to a Planned Unit Development, subject to the Neighborhood Meeting requirements specified in *Division 20.04.080(b)(3): Neighborhood Meeting*. Other types of petitions requiring a public hearing may also be required by the staff to conduct a neighborhood meeting. Notice of the neighborhood meeting shall be made to any neighborhood association on record with the City within a five hundred (500) foot radius of the boundaries of the proposed Planned Unit Development. Such notice shall be made to the neighborhood associations and the Planning and Transportation Department at least seven (7) days in advance of the meeting. Staff may require additional neighborhood meetings if significant changes are made to the petition proposal after the initial neighborhood meeting occurs.

## 20.09.080 Schedule of Fees

- (a) The staff shall maintain an official fee schedule for petitions, subdivisions, and permits outlined in this Unified Development Ordinance. Such fees shall be approved by the Plan Commission and, where applicable, the Common Council. The official fee schedule shall be available to the public in the Planning and Transportation Department.
- (b) Fees shall be paid at the Planning and Transportation Department at the time of application. When the Planning and Transportation Department has received a complete submittal, the staff shall calculate the total of the application fee and any other applicable fees. All payments shall be made to the City of Bloomington.
- (c) Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any petition, subdivision request, or permit.

# General Requirements

## 20.09.090 Commitments; Zoning Map Amendments and PUD District Ordinances

- (a) **Authority:** The Plan Commission may allow or require the owner of a parcel of real property to make a written commitment concerning use and/or development of that parcel where the making of such commitment will further the goals of the Unified Development Ordinance or the Growth Policies Plan. In the case of a PUD district ordinance, the Common Council may allow or require the owner of a parcel of real property to make a written commitment concerning use and/or development of that parcel pursuant to IC 36-7-4-1512. In the case of PUD Final Plan approval delegated to the staff by this Unified Development Ordinance, the staff may also allow or require the owner to make a written commitment under this section, and shall have all powers and duties of the Plan Commission under this section except the power to approve modification or termination of a Commitment. Commitments may be allowed or required as part of a proposal to amend the zoning map under IC 36-7-4-608 and *Chapter 20.09: Processes, Permits and Fees*; and, in connection with a proposal to adopt a PUD District Ordinance, or in connection with Final Plan approval, under the IC 36-7-4-1500 Series and *Chapter 20.04: Planned Unit Development Districts*.
- (b) **Approval Procedure:** The procedure by which the Plan Commission or staff allows or requires a written commitment shall be the same as the procedure set forth in the Plan Commission Rules of Procedure and this Unified Development Ordinance for the underlying development proposal. The procedure by which the Common Council allows or requires a written commitment shall be the same as the procedure set forth in this code for consideration of the underlying ordinance. No additional notice or hearing shall be required.
- (c) **Form of Commitments:** When allowed or required by an action of the Plan Commission or staff, a written commitment shall be recorded by the Petitioner, in a form approved by the Legal Department, which contains the following information:
- (1) The address and legal description of the parcel of real property to which the commitment is attached;
  - (2) The name and address of the property owner executing the commitment;
  - (3) The case number and a brief description of the proposal in connection with which the commitment is being made;
  - (4) A detailed statement of the owner's commitment regarding use and/or development of the property. The commitment may include the obligation to perform or refrain from performing any action, and the obligation may be of a continuing nature;
  - (5) A cross reference to the deed for the parcel of real property to which the commitment is attached;
  - (6) A statement that the commitment shall be recorded in the County Recorder's office and shall run with the land and be binding on the signatories and upon any subsequent owner or other person acquiring an interest in the real estate;
  - (7) A statement that the commitment shall be enforceable by the City, or by any adjacent property owner or other interested party as defined by the Plan Commission Rules of Procedure;
  - (8) A statement that failure to honor the commitment shall constitute a violation of the Unified Development Ordinance and shall be subject to the penalties for the same in addition to any other enforcement remedies;
  - (9) A statement that the commitment may be modified or terminated only by action of the Plan Commission;
  - (10) A statement about how the recording of the commitment shall be verified by the staff.
- (d) **Recording:** A commitment instrument made hereunder shall be recorded in the County Recorder's office upon approval of the proposal and prior to issuance of any Certificates of Zoning Compliance for the area involved in the proposal. The petitioner shall deliver one (1) copy of the recorded commitment instrument to the Planning and Transportation Department within ten (10) business days of recording.
- (e) **Effect of Commitments:** A commitment made under this Unified Development Ordinance takes effect upon approval of the proposal (*i.e.* adoption of an ordinance changing the zoning map or designating a Planned Unit Development zoning district, or approval of a Final Plan) in connection with which the commitment is made. An unrecorded commitment is binding upon the owner of the parcel, but is only binding upon a subsequent owner or other person acquiring an interest in the parcel if that person has actual notice of the commitment. A recorded commitment is binding upon any subsequent owner and any person acquiring an interest in the parcel.

# General Requirements

- (f) Right to Enforce Commitments:
  - (1) *City:* The City may enforce any commitment allowed or required by the Plan Commission or the staff as if the commitment were a standard of the Unified Development Ordinance.
  - (2) *Specially Affected Persons or Class of Specially Affected Persons:* A written commitment shall be enforceable by any property owner adjacent to the parcel of real estate that was the subject of the underlying petition in connection with which the commitment was made, or other interested party as defined by the applicable Rules of Procedure.
- (g) Modification or Termination:
  - (1) *Procedure:* When a commitment has been allowed or required by the Common Council, Plan Commission or staff in conjunction with a petition under the Unified Development Ordinance, either the petitioner, a subsequent owner of the parcel, or a person who acquires an interest in the parcel may apply to the Plan Commission for modification or termination of the commitment. The Plan Commission may approve modification or termination after notice and public hearing pursuant to the Plan Commission Rules of Procedure in any case where the modification or termination will further the goals of the Unified Development Ordinance or the Growth Policies Plan.
  - (2) *Recording:* The petitioner shall record the modification or termination instrument in the County Recorder's office. The petitioner shall deliver one (1) copy of the recorded modification or termination instrument to the Planning and Transportation Department within ten (10) business days of recording. A modification or termination instrument made hereunder shall be recorded in the County Recorder's office upon approval of the proposal and prior to issuance of a Certificate of Zoning Compliance for the area involved in the proposal.
- (h) Automatic Termination of Commitments: A commitment made in connection with a zoning map amendment, adoption of a PUD District Ordinance, or PUD Final Plan approval terminates automatically if after adoption of the petition the zoning district applicable to the area involved in the proposal is changed (which shall include designation as a Planned Unit Development).

## 20.09.100 Commitments; Site Plan

- (a) Authority: The Plan Commission or staff, whichever is the approving authority, may allow or require the owner of a parcel of real property to make a written commitment concerning use and/or development of that parcel in connection with approval of a Site Plan pursuant to *Section 20.09.120: Site Plan Review*.
- (b) Governing Provisions: The procedure, form, recording, effect, enforcement, and modification or termination of Commitments under this Section shall be the same as set forth in *Section 20.09.090: Commitments; Zoning Map Amendments and PUD District Ordinances*, unless otherwise provided in the Plan Commission Rules of Procedure, except that *Subsection 20.09.090(h): Automatic Termination of Commitments* concerning automatic termination shall not apply. The Plan Commission in its Rules of Procedure may not delegate the authority to modify or terminate a commitment to another entity.

# General Requirements

## 20.09.110 Commitments; Variance and Conditional Use

- (a) **Authority:** The Board of Zoning Appeals, in connection with any variance or Conditional Use proposal, may allow or require the owner of a parcel of real property to make a written commitment concerning use and/or development of that parcel where the making of such commitment will further the goals of the Unified Development Ordinance or the Growth Policies Plan. In any case where the Hearing Officer is authorized by the Plan Commission Rules of Procedure to hear and approve a variance or Conditional Use proposal, the Hearing Officer may also allow or require the owner to make a written commitment under this section, and shall have all powers and duties of the Board of Zoning Appeals under *Section 20.09.110: Commitments; Variance and Conditional Use* except the power to approve modification or termination of a Commitment.
- (b) **Governing Provisions:** The procedure, form, recording, effect, enforcement, and modification or termination of commitments under this Section shall be the same as set forth in *Section 20.09.090: Commitments; Zoning Map Amendments and PUD District Ordinances*, and the Board of Zoning Appeals and Hearing Officer shall have all the powers given to the Plan Commission under *Section 20.09.090: Commitments; Zoning Map Amendments and PUD District Ordinances*, provided that:
  - (1) The Board of Zoning Appeals may by rule provide for different procedures, but may not delegate the authority to modify or terminate a commitment to another entity; and
  - (2) *Subsection 20.09.090(h): Automatic Termination of Commitments* concerning automatic termination shall not apply to Commitments governed by *Section 20.09.110: Commitments; Variance and Conditional Use*.
- (c) **Special Rule for Hearing Officer:** If the owner of a parcel of real estate fails to accept a condition imposed, or to make a commitment allowed or required, by the Hearing Officer, then the owner's petition shall be considered withdrawn or, if requested by the owner, shall be transferred to the Board of Zoning Appeals.

## 20.09.120 Site Plan Review

- (a) **Intent:** The intent of Site Plan Review shall be:
  - (1) To promote well-planned and well-designed use of property;
  - (2) To promote a high character of community development;
  - (3) To review Site Plans relative to site layout, improvements and engineering in the interest of public health, safety, convenience and welfare;
  - (4) To promote new development that has a positive impact on the community as a whole, does not negatively impact neighbors, protects sensitive natural resources, is well-designed to maximize efficient use of the land and surrounding transportation system, and provides for adequate storm water management;
  - (5) To review Site Plans to determine compliance with the standards of the Unified Development Ordinance;
  - (6) To protect environmental quality;
  - (7) To ensure that the statutory requirements established in the Indiana Code for Development Plan review and approval are met.
- (b) **Applicability:** Submission and approval of a Site Plan shall be required in all zoning districts established in *Chapter 20.01: Ordinance Foundation* of this Unified Development Ordinance. Every application for a permit and/or Certificate of Zoning Compliance for grading, establishment of a use or change in use, new construction, any building addition, or tree removal shall also be an application for Site Plan approval, except as provided otherwise herein.
- (c) **Exceptions:** The content and scope of review of a required Site Plan shall be limited as follows:
  - (1) *Single-family Residence:* The Site Plan for a single-family residence on a lot of record, including the establishment therein of a home occupation, day care home, bed and breakfast, or any Conditional Use shall be limited to an accurately-scaled drawing showing existing and proposed lot lines, easements, improvements, setbacks, and any other information needed to demonstrate compliance with the provisions of this Unified Development Ordinance. In the case of a Site Plan involving partial demolition governed by the demolition waiting period provisions of *Section 20.09.230: Demolition and Demolition Delay*, the application shall also include the information required by (d)(6), below.
  - (2) *Additions, Expansions or Changes in Use:* The Site Plan for an addition, expansion, or change in use involving an existing building may be limited in scope to those requirements that are affected by the proposed development. The entire property may not need to be rendered on the Site Plan, except where necessary to demonstrate compliance with requirements.
- (d) **Applications:** Applications for Site Plans shall be accompanied by the following information:
  - (1) A scaled drawing using not less than a 1" = 50' scale, or as considered appropriate by the staff, which shows major circulation; specific location and dimensions of buildings, structures, and parking areas; open space areas, recreation facilities, and other details to indicate the character of the proposed development. The submission shall also include:
    - (A) Boundary lines and acreage of each land use component;
    - (B) Existing easements, including location, width and purpose;
    - (C) Existing land-use on abutting properties;
    - (D) Other conditions on adjoining land: topography (two-foot contours) including any embankments or retaining walls; use and location of major buildings, railroads, power lines, towers and other influences; name of any adjoining subdivision plat;
    - (E) Existing streets on and adjacent to the tract, including street name, right-of-way width, sidewalks, curbs, gutters, and culverts;
    - (F) Any public improvements planned for future construction on or adjacent to the tract;
    - (G) Existing utilities on the tract;
    - (H) Any land on the tract within the one-hundred-year floodplain;
    - (I) Other conditions on the tract, including water courses, wetlands, rock outcrops, wooded areas, isolated trees ten (10) inches or more in diameter, and other significant features;
    - (J) Map Data: Name of development, north point, scale and date of preparation.
    - (K) Model type and manufacturer of any bicycle racks to be installed.

# Petitions

- (2) Precise location of all proposed buildings to be constructed, and a designation of the specific use or range of uses for each building.
  - (3) Design and precise location of all proposed streets, drives and parking areas, including construction details, center line elevations, pavement type, curbs, gutters, and culverts.
  - (4) Location of all proposed utility lines and easements.
  - (5) A detailed Landscape Plan, including plant size, common and scientific name of species, installation specifications, identification of vegetation to be preserved and the site measures to accomplish preservation, and conservation easements where required.
  - (6) Illustrations of required architectural design elements such as building elevations, renderings, photographs and any other information deemed necessary by the staff to determine compliance with this Unified Development Ordinance. Such illustrations shall clearly depict the massing, scale and architectural details of the proposed development.
    - (A) *Commercial Downtown*: In the case of a Site Plan involving new development in the Commercial Downtown (CD) zoning district, the petitioner shall submit a three-dimensional scale model that shows the proposed development in the context of all properties whose boundary lines touch that of the proposed development.
      - (i) The model may be a physical model or computer generated. If a physical model is provided, it must be accompanied by a digital video archival file showing the physical model in 360 degrees.
      - (ii) Regardless of model format, the level of detail provided shall be sufficient to depict the proposed surface materials including color, detail, and massing of adjacent and significant neighborhood structures as advised by staff, for all proposed structures.
    - (B) *Demolition Delay*: In the case of a Site Plan involving partial demolition governed by the demolition waiting period provisions of *Section 20.09.230: Demolition and Demolition Delay*, the application shall include a photograph or an accurately-scaled drawing of each building elevation, both existing and proposed, that will be physically affected either by the proposed partial demolition or by any proposed construction, reconstruction or alteration associated therewith. Each such depiction shall clearly show or indicate all proposed changes in design or material that will be subject to public view. Each such depiction shall also identify with reasonable specificity the type, design and location relative to the elevation of all proposed building materials.
  - (7) Traffic Studies as deemed necessary by the staff to determine the extent of public improvements required to accommodate traffic generated by the proposed development.
  - (8) Where such features are included in a development proposal, a detailed description of the sustainable development features that are incorporated into the proposed site plan, including any supplementary materials required to explain such features.
  - (9) *Miscellaneous*: The staff shall inform the applicant of any additional documents or data requirements after the pre-application conference. Such additional documents or data shall include but not be limited to those required by *Chapter 20.05; §EN: Environmental Standards*, where applicable.
- (e) Site Plan Review Process:
- (1) *Review of Applications*: Upon receipt of a full and complete application for Site Plan review, including supportive documents and the appropriate fees, the staff shall review the application and supportive documents for technical conformity with the standards of the Unified Development Ordinance. Final review of the proposed Site Plan will be assigned to staff or the Plan Commission based on the following criteria:
    - (A) Plan Commission: The Plan Commission shall review the following Site Plans:
      - (i) Any site located within five hundred (500) feet of the centerline of State Road 37;
      - (ii) Any downtown projects that require Plan Commission review as directed by *Chapter 20.03: Overlay Districts*;
      - (iii) Any multifamily development of one hundred (100) dwelling units or more;
      - (iv) Any nonresidential development of 25,000 square feet gross floor area or more;

- (v) Any Site Plan incorporating the construction of a new street as shown on the Thoroughfare Plan; and
  - (vi) Subject to the discretion of the Planning and Transportation Director, any Site Plans containing more intense land uses adjacent to existing, less intense land uses.
- (B) Planning and Transportation Department: The staff shall review any Site Plans that do not meet the criteria provided in *Subdivision 20.09.120(e)(1)(A): Plan Commission* above.
- (2) Upon receiving a request for information or documentation, a recommendation for modifications from the staff or a denial by the staff, an applicant may request Site Plan review by the Plan Commission no later than five (5) days after receipt by the applicant of the request from the staff for more information, documentation, changes, or notice of staff denial. Failure by an applicant to file such request in accordance with the foregoing provisions shall be deemed to constitute a withdrawal of the application for Site Plan approval.
  - (3) Any person, other than the applicant, aggrieved by a Site Plan decision by the staff may appeal the staff decision to the Plan Commission. Such appeal shall be filed in the Planning and Transportation Department within five (5) days of the staff’s decision. The appeal shall specify the grounds for the appeal and must be filed in the form established by the Plan Commission Rules of Procedure. All appeals shall be accompanied by fees required by the Plan Commission Rules of Procedure.
  - (4) The Plan Commission decision shall be based on the evidence presented to the Plan Commission by the applicant, the staff, and other interested parties. The burden of proof shall be borne by the applicant.
  - (5) The Plan Commission shall act as promptly as practicable on any Site Plan review.
  - (6) The Plan Commission shall hold a public hearing in accordance with *Section 20.09.060: Public Hearing Procedures* and review the Site Plan according to the criteria established in *Division Subdivision 20.09.120(e)(9)* below.
  - (7) The Plan Commission may approve or disapprove a Site Plan or may approve with conditions which are reasonably necessary to satisfy the applicable development standards. The Plan Commission may also permit or require recordable commitments governing the use or development of property in accordance with the Plan Commission Rules of Procedure.
  - (8) Approval of a Site Plan shall be effective for a maximum period of one (1) year unless, upon application by the developer, the approving authority grants an extension.
  - (9) The staff or Plan Commission, whichever is reviewing the Site Plan, shall make written findings concerning each decision to approve or disapprove a Site Plan.
    - (A) Findings of Fact: A Site Plan shall be approved by the staff or Plan Commission only upon making written findings that the Site Plan:
      - (i) Is consistent with the Growth Policies Plan;
      - (ii) Satisfies the requirements of *Chapter 20.02: Zoning Districts*;
      - (iii) Satisfies the requirements of *Chapter 20.05: Development Standards*;
      - (iv) Satisfies the requirements of *Chapter 20.07: Design Standards*; and
      - (v) Satisfies any other applicable provisions of the Unified Development Ordinance.
    - (B) Signature: The Planning and Transportation Director shall be responsible for signing the written findings.
    - (C) Disapproval Notification: The staff shall furnish the petitioner with a copy of the decision.

# Petitions

## 20.09.130 Development Standards Variance

- (a) **Intent:** The purpose of *Section 20.09.130; Development Standards Variance* is:
- (1) To outline the process by which petitions for variances from the development standards of the Unified Development Ordinance are considered;
  - (2) To provide a mechanism to approve those petitions that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the Unified Development Ordinance will result in practical difficulties, and so that the spirit of the Unified Development Ordinance shall be observed and substantial justice done.
- (b) **Applicability:**
- (1) The Board of Zoning Appeals or Hearing Officer, in accordance with the procedures and standards set out in *Chapter 20.09: Processes, Permits and Fees*, may grant variances from the development standards applicable to the zoning district in which the subject property is located.
  - (2) *Effect of Approval of Variances from the Development Standards:* The grant of variances from the development standards authorizes the development and establishes the terms of use. Variances from development standards are also subject to Site Plan requirements, all necessary permits and approvals, and other applicable requirements. All required permits must be obtained before any grading, construction, or use commences.
- (c) **Exceptions:**
- (1) *Subdivision Control:* It is not within the jurisdiction of the Board of Zoning Appeals or Hearing Officer to grant Development Standards Variances of *Chapter 20.06: Subdivision Types* or *Chapter 20.07: Design Standards*.
- (d) **Application:** Refer to application requirements found at *Section 20.09.030: Applications; General*.
- (e) **Findings of Fact:** Pursuant to IC 36-7-4-918.5, the Board of Zoning Appeals or Hearing Officer may grant a variance from the development standards of the Unified Development Ordinance if, after a public hearing, it makes findings of fact 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 Development Standards Variance will not be affected in a substantially adverse manner; and
  - (3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.
- (f) **Signature:** The findings of fact shall be signed by the Chair of the Board of Zoning Appeals or the Hearing Officer.
- (g) **Notification:** The staff shall furnish the petitioner with a copy of the decision of the Board of Zoning Appeals or Hearing Officer.
- (h) **Duration:**
- (1) Unless otherwise specified at the time of approval, any Development Standards Variance granted by the Board of Zoning Appeals or Hearing Officer shall expire:
    - (A) In cases where new construction or modifications to an existing structure are required, three (3) years after the date that the Development Standards Variance was granted, unless a Building Permit has been obtained and construction of the structure or structures has commenced; or
    - (B) In cases where new construction or modifications to an existing structure are not required, three (3) years after the date that the Development Standards Variance was granted, unless a Certificate of Occupancy has been obtained and the use commenced; or
    - (C) At the date of termination as established by the Board of Zoning Appeals or Hearing Officer as a condition or commitment if different from *Subdivision 20.09.130(h)(1)(A)* or *Subdivision 20.09.130(h)(1)(B)* above.
  - (2) If an appeal by writ of certiorari is taken from an order granting a Development Standards Variance, the time during which such appeal is pending shall not be counted in determining whether the Development Standards Variance has expired under *Subdivision 20.09.130(h)(1)(A)*, *Subdivision 20.09.130(h)(1)(B)*, or *Subdivision 20.09.130(h)(1)(C)* above.

## 20.09.135 Sidewalk and Determinate Sidewalk Variances

- (a) **Intent:** The purposes of this section are:
  - (1) To outline the process by which petitions for a sidewalk variance and a determinate sidewalk variance are considered;
  - (2) To provide a mechanism to approve these petitions that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of *Section 20.05.010(b)(3)* will result in practical difficulties, and so that the spirit of *Section 20.05.010(b)(3)* shall be observed and substantial justice done.
- (b) **Applicability:** The board of zoning appeals or hearing officer, in accordance with the procedures and standards set out in *Chapter 20.09: Processes, Permits and Fees*, may grant sidewalk variances and determinate sidewalk variances.
- (c) **Findings of Fact for Sidewalk Variance:** Pursuant to Indiana Code 36-7-4-918.5, the board of zoning appeals or the hearing officer may grant a variance from *Section 20.05.010(b)(3)* of the Unified Development Ordinance if, after a public hearing, it makes findings of fact 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 development standards variance will not be affected in a substantially adverse manner; and
  - (3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties.
  - (4) That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right-of-way make it impractical for construction of a sidewalk as required by *Section 20.05.010(b)(3)*; and
  - (5) That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which the new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians.
- (d) **Findings of Fact for Determinate Sidewalk Variance:** Pursuant to Indiana Code 36-7-4-918.5, the board of zoning appeals or the hearing officer may grant a variance from *Section 20.05.010(b)(3)* of the Unified Development Ordinance if, after a public hearing, it makes findings of fact 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 development standards variance will not be affected in a substantially adverse manner; and
  - (3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties; and
  - (4) The adjacent lot or tracts are at present undeveloped, but it appears that at some future date these lots or tracts will be developed, increasing the need for sidewalks for the protection and convenience of pedestrians; and
  - (5) The location of the lot or tract is such that the present pedestrian traffic does not warrant the construction of sidewalks, but it appears that in the future the pedestrian traffic may increase; and
  - (6) Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date.
- (e) **Notification:** The staff shall furnish the petitioner with a copy of the decision of the board of zoning appeals or hearing officer.

# Petitions

- (f) Duration: Unless otherwise specified at the time of approval
- (1) In the event that the board of zoning appeals or hearing officer authorizes a determinate variance, such variance shall continue in effect until the date at which the board of zoning appeals or hearing officer shall set to reconsider variances granted under the authority of this section. All such variances which were granted by the board of zoning appeals or hearing officer shall expire at that time unless an extension is granted. Should no extension be applied for, or the board of zoning appeals or hearing officer denies such application for extension, the owner of the lot or tract shall be required to construct a sidewalk on the lot or tract at that time.
  - (2) Any person who has been granted a determinate variance by the board of zoning appeals or hearing officer and subsequently transfers to another party any recordable interest in the lot or tract shall cause such conveyance to be made subject to the variance and cause the variance to be noted on the instrument of conveyance to be recorded.

## 20.09.140 Use Variance

- (a) **Intent:** The purpose of *Section 20.09.140; Use Variance* is:
  - (1) To outline the process by which petitions for variances of use are considered;
  - (2) To provide a mechanism to approve those that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the Unified Development Ordinance will result in unnecessary hardship, and so that the spirit of the Unified Development Ordinance shall be observed and substantial justice done.
- (b) **Applicability:**
  - (1) The Board of Zoning Appeals or Hearing Officer, in accordance with the procedures and standards set out in *Chapter 20.09: Processes, Permits and Fees*, may grant Use Variance approval authorizing the establishment of a land use which deviates from the permitted uses applicable to the zoning district in which the subject property is located.
  - (2) *Effect of Approval of a Use Variance:* The granting of a Use Variance authorizes the use and establishes the terms of use. Use Variances are also subject to Site Plan requirements, all necessary permits and approvals, and other applicable requirements. All required permits must be obtained before any grading, construction, or use commences.
- (c) **Application:** Refer to application requirements found at *Section 20.09.030: Applications; General*.
- (d) **Plan Commission Review:** The Plan Commission shall review and make recommendations to the Board of Zoning Appeals on any Use Variance petition that involves multifamily or nonresidential uses.
- (e) **Findings of Fact:** Pursuant to IC 36-7-4-918.4, the Board of Zoning Appeals or the Hearing Officer may grant a variance from use if, after a public hearing, it makes findings of fact 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 Use Variance will not be affected in a substantially adverse manner; and
  - (3) The need for the Use Variance arises from some condition peculiar to the subject property itself; and
  - (4) The strict application of the terms of the Unified Development Ordinance will constitute an unnecessary hardship if they are applied to the subject property; and
  - (5) The approval of the Use Variance does not interfere substantially with the goals and objectives of the Growth Policies Plan.
- (f) **Signature:** The findings of fact shall be signed by the Chair of the Board of Zoning Appeals or the Hearing Officer.
- (g) **Notification:** The staff shall furnish the petitioner with a copy of the decision of the Board of Zoning Appeals or Hearing Officer.
- (h) **Duration:**
  - (1) Unless otherwise specified at the time of approval, any Use Variance granted by the Board of Zoning Appeals or Hearing Officer shall expire:
    - (A) In cases where new construction or modifications to an existing structure are required, three (3) years after the date that the Use Variance was granted, unless a Building Permit has been obtained and construction of the structure or structures has commenced; or
    - (B) In cases where new construction or modifications to an existing structure are not required, three (3) years after the date that the Use Variance was granted, unless a Certificate of Occupancy has been obtained and the use commenced; or
    - (C) At the date of termination as established by the Board of Zoning Appeals or Hearing Officer as a condition or commitment if different from *Subdivision 20.09.140(h)(1)(A)* or *Subdivision 20.09.140(h)(1)(B)* above.
  - (2) If an appeal by writ of certiorari is taken from an order granting a Use Variance, the time during which such appeal is pending shall not be counted in determining whether the Use Variance has expired under *Subdivision 20.09.140(h)(1)(A)*, *Subdivision 20.09.140(h)(1)(B)*, or *Subdivision 20.09.140(h)(1)(C)* above.

# Petitions

## 20.09.150 Conditional Use

- (a) **Intent:** The purpose of *Section 20.09.150; Conditional Use* is to allow a use for which certain conditions must be met before it can be established at a given location. The use shall be permitted by the Board of Zoning Appeals or Hearing Officer if it is determined that the enumerated conditions are met.
- (b) **Prerequisites:**
  - (1) No use classified as conditional may be conducted without first obtaining a Conditional Use approval under *Chapter 20.09: Processes, Permits and Fees*. No Conditional Use shall be conducted except in compliance with all applicable provisions of this Unified Development Ordinance and with any conditions upon such Conditional Use approval.
- (c) **Applicability:**
  - (1) The Board of Zoning Appeals or Hearing Officer, in accordance with the procedures and standards set out in *Chapter 20.09: Processes, Permits and Fees*, may grant Conditional Use approval authorizing the development of uses listed as Conditional Uses in the regulations applicable to the zoning district in which the subject property is located.
  - (2) *Effect of Approval of a Conditional Use:* The granting of a Conditional Use authorizes the use and establishes the terms of use. Conditional Uses are also subject to Site Plan requirements, all necessary permits and approvals, and other applicable requirements. All required permits must be obtained before any grading, construction, or use commences.
- (d) **Application:** Refer to application requirements found at *Section 20.09.030: Applications; General*.
- (e) **Plan Commission:**
  - (1) *Delegation of Authority:* The Plan Commission may, by rule, establish procedures to be followed by a Hearing Officer. The Hearing Officer may hear such Conditional Uses as may be authorized by the Plan Commission Rules of Procedure.
- (f) **Changes or Amendments:**
  - (1) *Amendments to Conditional Use Approvals:*
    - (A) Any modification or intensification of a Conditional Use that alters the essential character or operation of the use in a way not intended by the Board of Zoning Appeals or Hearing Officer at the time the Conditional Use was granted shall require a new Conditional Use approval. The property owner/operator or his or her authorized representative shall apply for such Conditional Use approval prior to any modification of the use or property.
    - (B) The staff shall determine in writing whether the proposed modification or intensification represents an alteration in the essential character of the original Conditional Use as approved. The operator of the Conditional Use shall provide the staff with all the necessary information to render this determination.
  - (2) The Hearing Officer may hear requests for amendments to a Conditional Use, if authorized by the Plan Commission.
- (g) **Duration:**
  - (1) Unless otherwise specified at the time of approval, any Conditional Use granted by the Board of Zoning Appeals or Hearing Officer shall expire:
    - (A) In cases where new construction or modifications to an existing structure are required, three (3) years after the date that the Conditional Use was granted, unless a Building Permit has been obtained and construction of the structure or structures has commenced; or
    - (B) In cases where new construction or modifications to an existing structure are not required, three (3) years after the date that the Conditional Use was granted, unless a Certificate of Occupancy has been obtained and the use commenced; or
    - (C) At the date of termination as established by the Board of Zoning Appeals or Hearing Officer as a condition or commitment if different from *Subdivision 20.09.150(g)(1)(A)* or *Subdivision 20.09.150(g)(1)(B)* above.
  - (2) If an appeal by writ of certiorari is taken from an order granting a Conditional Use, the time during which such appeal is pending shall not be counted in determining whether the Conditional Use has expired under *Subdivision 20.09.150(g)(1)(A)*, *Subdivision 20.09.150(g)(1)(B)*, or *Subdivision 20.09.150(g)(1)(C)* above.

## 20.09.160 Amendment to Zoning Map

- (a) **Intent:** The purpose of *Section 20.09.160; Amendment to Zoning Map* is to outline the procedure employed by the City when considering a petition for the rezoning of real property within the jurisdictional area of the Plan Commission. Further, the intent of the Zoning Map Amendment section is to ensure that the statutory requirements established in the Indiana Code for the zoning of real property are met.
- (b) **Applicability:** The Zoning Map Amendment section is applicable to proposals to change the zoning district classification of a parcel of real property to a different zoning district classification other than a Planned Unit Development zoning district.
- (c) **Application:**
  - (1) **Supportive Information:** The application shall include, but not be limited to, the following documents:
    - (A) **Pre-submittal Meeting Documentation:** The application shall include all documentation specified by the staff during the pre-submittal meeting.
    - (B) **Application Form:** The application shall include all documentation specified on the application form unless certain documentation is deemed superfluous by the staff due to the specific circumstances of the particular petition.
    - (C) **Additional Information:** Such other additional information as may be required by the staff or other members of the Development Review Committee to evaluate the application.
- (d) **Plan Commission:**
  - (1) **Review:** When reviewing a Zoning Map Amendment petition, the Plan Commission shall consider the following:
    - (A) The recommendations of the Growth Policies Plan;
    - (B) Current conditions and character of structures and uses in each zoning district;
    - (C) The most desirable use for which the land in each zoning district is adapted;
    - (D) The conservation of sensitive environmental features;
    - (E) The conservation of property values throughout the jurisdiction; and
    - (F) Responsible development and growth.
  - (2) **Decision:** The Plan Commission shall:
    - (A) Forward the petition to the Common Council with:
      - (i) A favorable recommendation;
      - (ii) A favorable recommendation with conditions and/or commitments;
      - (iii) A negative recommendation;
      - (iv) No recommendation; or
    - (B) Continue the petition to a definite future meeting date.
  - (3) **Certification:** If the petition has not been continued, the Plan Commission shall certify and forward the petition to the Common Council.
- (e) **Common Council:** The Common Council shall act on the petition within ninety (90) days of certification by the Plan Commission in accordance with IC 36-7-4-608.
- (f) **Effect of Approval of the Amendment:**
  - (1) When an amendment of the Official Zoning Map is approved, such amendment shall be incorporated into the Official Zoning Map in the geographic information system maintained by the City.
  - (2) For Zoning Map amendments located adjacent to public streets, all required right-of-way shall be dedicated in compliance with the Thoroughfare Plan. Such dedication shall take place within 180 days of approval of the Zoning Map amendment. The 180 day time limit may be extended by the Planning and Transportation Director, but not unless the requirement is clearly specified in a Recordable Zoning Commitment approved by the City.

# Subdivision Control

## 20.09.170 Subdivision Control; General

- (a) **Citation:** Chapter 20.09; §Subdivision Control, together with *Chapter 20.06: Subdivision Regulations* and *Chapter 20.07: Design Standards* may be cited as the Subdivision Control Ordinance.
- (b) **Intent:** The purpose of the Subdivision Control Ordinance is to guide the development of the Plan Commission's jurisdictional area in such a manner as to provide for the improvement of the health, safety, convenience, and general welfare of its citizens and to plan for the future development of the community; to the end that streets and highways be carefully planned; that new areas grow only with adequate street/utility, health, education and recreational facilities. Further, that the needs of public utilities and facilities be recognized in the future growth; that residential areas provide healthy surroundings for family life and that the growth of the community is commensurate with the efficient and economical use of public funds.
- (c) **Authorization to Subdivide:** The subdivision of land may occur in any zoning district.
- (d) **Adoption, Amendment and Jurisdiction:** The Subdivision Control Ordinance shall be adopted, amended, or repealed in the same manner as other sections of the Unified Development Ordinance. After the Subdivision Control Ordinance has been adopted and a certified copy of the ordinance has been filed with the County Recorder's office, the Plan Commission shall have exclusive control over the approval of all plats and replats involving land covered by the Subdivision Control Ordinance.
- (e) **Jurisdiction over Unincorporated Land:** The Plan Commission shall have exclusive control over the approval of plats and replats involving unincorporated land within its jurisdiction.
- (f) **Condominiums:** The Subdivision Control Ordinance does not apply to the platting of condominium units regulated by IC 32-25: Condominiums.
- (g) **Applicability:** These subdivision regulations shall apply to all subdivisions of land, as defined herein, located within the jurisdiction of the Plan Commission. No land within said jurisdiction shall be subdivided until:
  - (1) A plat conforming to these regulations has been approved and certified by the Plan Commission;
  - (2) The approved Final Plat has been filed with the County Recorder's office.
- (h) **Subdivision Type:** All subdivisions shall be designed according to one of the subdivision types specified in *Chapter 20.06: Subdivision Regulations*. A single subdivision shall not incorporate more than one (1) of the subdivision types unless specifically authorized by the Plan Commission.
- (i) **Exceptions:** The regulations of *Chapter 20.09; §Subdivision Control* shall not apply to the following:
  - (1) An adjustment of lot lines as shown on a recorded plat which does not reduce the area, frontage, width, depth, or building setback lines of each building site below the minimum zoning requirements, and does not change the original number of lots in any block of the recorded plat.
  - (2) A division of land into two (2) or more tracts for an agricultural use of ten (10) or more acres, not involving any new street or access easement.
  - (3) An allocation of land in the settlement of an estate of a decedent or a court decree for the distribution of property.
  - (4) The unwilling sale of land as a result of legal condemnation as defined and allowed in State law.
  - (5) Widening of existing streets to conform to the Growth Policies Plan.
  - (6) The acquisition of street rights-of-way by a public agency in conformance with the Growth Policies Plan.
  - (7) The exchange of land between owners of adjacent property provided that such exchange does not serve to reduce lot area or other dimensions below required minimums.

# Subdivision Control

## 20.09.180 Subdivision Control; Preliminary Plat

- (a) **Intent:** The purpose of the Preliminary Plat section is to outline the procedure employed by the City when considering a petition for the platting of a subdivision. Further, the intent of the Preliminary Plat section is to ensure that the statutory requirements established in the Indiana Code for the subdivision of land are met.
- (b) **Prerequisites:**
  - (1) *Pre-submittal Meeting:* Prior to submitting a Preliminary Plat application, the petitioner shall meet with the staff to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed development of the property. The staff shall aid and advise the petitioner in preparing the application and supportive documents as necessary.
  - (2) *Development Review Committee:* Once the staff has determined that it has received a submittal that is sufficiently complete for Development Review Committee review, the staff shall place the item on an agenda of the Development Review Committee and inform the petitioner of the time, date, and place of the meeting.
- (c) **Applicability:** A Preliminary Plat shall be prepared in conjunction with any proposal to subdivide or plat property within the jurisdictional area of the Plan Commission.
- (d) **Application:** The Preliminary Plat shall contain the following information:
  - (1) *Description:*
    - (A) Proposed name of the subdivision;
    - (B) Street address;
    - (C) Name and address of petitioner;
    - (D) Name, address and seal of the registered professional engineer or land surveyor preparing the Preliminary Plat;
    - (E) Scale of plat, north point and date.
  - (2) *Existing Conditions:*
    - (A) Boundary line of proposed subdivision indicated by solid heavy line;
    - (B) Location, width, and names of all existing or prior platted streets or other public ways, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings or structures, and section and municipal corporation lines, within or adjacent to the tract;
    - (C) In case of a Replat, all descriptive lines of the original plat being vacated shall be shown by dotted lines in their proper position in relation to the new arrangement of the plat, the new plat being clearly shown in solid lines so as to avoid ambiguity or confusion;
    - (D) Existing sewers, water mains, culverts or other underground facilities within the tract, indicating pipe sizes, grades and exact location, as obtained from public records;
    - (E) Boundary lines of adjacent unsubdivided and subdivided land, showing owners' names;
    - (F) Existing zoning district of the proposed subdivision and adjacent tracts, in zoned areas;
    - (G) Contours, based on the City datum, at not more than five (5) feet nor less than two (2) feet vertical intervals as required by the Plan Commission;
    - (H) Flood hazard areas, the elevation of the regulatory flood and the area subject to inundation thereby.
  - (3) *Proposed Conditions:*
    - (A) Layout of streets, their names and widths and also widths of alleys, crosswalks and easements. The names of the streets shall conform as far as practicable to the names of corresponding streets existing in the vicinity of the subdivision. The name of a new street, not an extension or a correspondent of an existing street, shall not duplicate that of an existing street in the City;
    - (B) Layout, dimensions and numbers of lots;
    - (C) Parcels of land to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision;
    - (D) Building setback lines, showing dimensions.
    - (E) Where such features are included in a development proposal, a detailed description of the sustainable development features that are incorporated into the proposed preliminary plat, including any supplementary materials required to explain such features.

# Subdivision Control

(e) Planning and Transportation Department:

(1) *Review of Application:* Upon receipt of a complete application, supportive documents, and the appropriate fees, the staff shall review the application for technical conformity with the standards fixed in the Unified Development Ordinance. The staff shall then decide to:

- (A) Assign the Preliminary Plat to the Plat Committee for review; or
- (B) Assign the Preliminary Plat to the Plan Commission for review.

Within thirty (30) days after receipt of a complete application, the staff shall announce a date for hearing before the Plan Commission or Plat Committee, and provide for notice in accordance with this ordinance and Plan Commission Rules.

(f) Plan Commission:

(1) *Decision:* The Plan Commission shall:

- (A) Approve the petition;
- (B) Approve the petition with conditions;
- (C) Deny the petition; or
- (D) Continue the petition to a definite future meeting date.

(2) *Effect of Approval:* The approval of a Preliminary Plat by the Plan Commission is strictly tentative, involving merely the general acceptability of the layout as submitted;

(3) *Appeal of a Decision of the Plat Committee:* The Plan Commission shall review an appeal of a Preliminary Plat approval granted by the Plat Committee at a public hearing using the same procedure as though it were a Preliminary Plat application filed with the Plan Commission.

(A) *Decision:* The Plan Commission shall:

- (i) Affirm the decision of the Plat Committee;
- (ii) Affirm the decision of the Plat Committee with additional conditions;
- (iii) Reverse the decision of the Plat Committee; or
- (iv) Continue the petition to a definite future meeting date.

(4) *Revisions:* Following Plan Commission approval, the petitioner shall submit revised copies of the plans that address the conditions required by the Plan Commission. The petitioner shall refer to the application form to determine the format and number of copies of the revised plans to deliver to the Planning and Transportation Department.

(g) Plat Committee:

(1) *Decision:* The Plat Committee shall:

- (A) Approve the petition;
- (B) Approve the petition with conditions;
- (C) Deny the petition;
- (D) Continue the petition to a definite future meeting date; or
- (E) Forward the petition to the Plan Commission.

(2) *Notice of Appeal:* An interested party may appeal the Plat Committee approval to the Plan Commission by filing a Notice of Appeal with the Plan Commission. Such appeal must be filed with the Plan Commission not more than ten (10) days after the action of the Plat Committee.

- (h) Review Considerations: At their regularly scheduled meeting, the Plat Committee or Plan Commission shall review:
- (1) The written statement and supportive material submitted by the petitioner;
  - (2) The Preliminary Plat;
  - (3) The testimony of the petitioner;
  - (4) The Growth Policies Plan;
  - (5) Any applicable standards in *Chapter 20.02: Zoning Districts*;
  - (6) Any applicable development standards in *Chapter 20.05: Development Standards*;
  - (7) Any applicable subdivision standards in *Chapter 20.06: Subdivision Regulations*;
  - (8) Any applicable design standards in *Chapter 20.07: Design Standards*.
  - (9) Any other applicable provisions of the Unified Development Ordinance;
  - (10) The Planning and Transportation Department report; and
  - (11) Such other additional information as may be required by the Plan Commission or Plat Committee to evaluate the petition.
- (i) Duration:
- (1) A Final Plat application shall be filed not later than twelve (12) months after the date of approval of the Preliminary Plat, otherwise the Preliminary Plat approval shall be considered void, to the extent permitted by *Section 20.01.210: Effect of Change in the Law* after Filing of Complete Application.
  - (2) One (1) extension of up to six (6) months may be authorized by the Planning and Transportation Director for reason/cause. The petitioner shall submit the request for extension in writing to the Planning and Transportation Director, and the Planning and Transportation Director shall make a written determination regarding his or her decision to extend or deny extension. Both the request and the determination shall be made part of the Preliminary Plat record.
- (j) All decisions of the Plan Commission or Plat Committee approving, denying or placing conditions upon a Preliminary Plat must be in writing and signed by the President of the Plan Commission, the Chair of the Plat Committee or the Planning and Transportation Director.

# Subdivision Control

## 20.09.190 Subdivision Control; Final Plat

- (a) **Intent:** The purpose of the Final Plat section is to outline the procedure employed by the City when considering a petition for the final platting of a subdivision. Further, the intent of the Final Plat section is to ensure that the statutory requirements established in the Indiana Code are met.
- (b) **Prerequisites:**
  - (1) *Preliminary Plat:* The Plan Commission or Plat Committee shall have approved the Preliminary Plat; and the Preliminary Plat must not be expired.
- (c) **Applicability:** No Final Plat of a subdivision of land located within the jurisdiction and territorial limits of the Plan Commission shall be recorded in the County Recorder's office until the plat has been approved by the Plan Commission in accordance with the following requirements, standards, and specifications, and such approval has been entered in writing on the plat by the President of the Plan Commission, Chair of the Plat Committee, or the Planning and Transportation Director.
- (d) **Application:** The following information is required for all Final Plats:
  - (1) Name of subdivision;
  - (2) Location by section, township and range, or by other legal description;
  - (3) The name and certification of the registered professional engineer or land surveyor;
  - (4) Scale shown graphically, date and north point;
  - (5) Boundary of plat, based on an accurate traverse with angular and lineal dimensions;
  - (6) Exact location, width and name of all streets within and adjoining the plat, and the exact location and widths of all alleys and crosswalks;
  - (7) True courses and distances to the nearest established street lines or official monuments which shall accurately describe the location of the plat;
  - (8) City, Township, County or section line accurately tied to the lines of the subdivision by distances and courses;
  - (9) Radii, internal angles, central angles, points of curvature and tangency, lengths of tangents and lengths of all arcs;
  - (10) All easements for rights-of-way provided for public services or utilities;
  - (11) All lot and block numbers and lines, with accurate dimensions in feet and hundredths. Blocks in numbered additions to subdivisions bearing the same name may be numbered consecutively through the several additions;
  - (12) Line of all streets with accurate dimensions in feet and hundredths, showing angles to street, alley and lot lines;
  - (13) The street addresses for all lots on the plat;
  - (14) Accurate location of all monuments, which shall be concrete four inches by four inches (4" × 4") at top, six inches by six inches (6" × 6") at bottom and thirty-six (36) inches long, with metal marker cast in center;
  - (15) Accurate outlines and legal description of any areas to be dedicated or reserved for public use, with the purposes indicated thereon and in the dedication; and of any area to be served by deed covenant for common uses of all property owners;
  - (16) Building setback lines accurately shown with dimensions;
  - (17) A description of the property platted which shall be the same as that recorded in preceding transfer of the property or that portion of the transfer covered by plat;
  - (18) Restrictive covenants of all types which run with the land;
  - (19) Certificates for approval by the Plan Commission and the Board of Public Works;
  - (20) If containing lands identified as flood hazard areas, the elevation of the regulatory flood.

# Subdivision Control

(e) Planning and Transportation Department:

- (1) *Review of Application:* The Plan Commission may review Final Plats or may by rule delegate to staff or the Plat Committee the authority to review Final Plats. Upon receipt of a complete application, supportive documents, and the appropriate fees, the staff shall review the application for technical conformity with the standards fixed in the Unified Development Ordinance. The staff shall then, in accordance with the Plan Commission Rules:
  - (A) Review and render a final decision upon the Final Plat; or
  - (B) Forward the Final Plat to the Plat Committee for review; or
  - (C) Forward the Final Plat to the Plan Commission for review.
- (2) *Decision:*
  - (A) Revision: The staff shall, based upon the facts presented for review, notify the petitioner in writing what revisions, changes, or further changes in the application are needed for approval.
  - (B) Approval: Following the petitioner's submittal of plans that incorporate the necessary revisions, the staff shall approve the Final Plat.
  - (C) Sign and Seal: Upon approval of the Final Plat, the Planning and Transportation Director shall sign and seal the plat at the appropriate locations.
  - (D) Notification: The staff shall then notify the petitioner of the Planning and Transportation Director's actions.
  - (E) Recording: The petitioner shall then file the Final Plat for recording in the County Recorder's office, as required by law.
  - (F) Within thirty (30) days of recording the Final Plat, the petitioner shall provide the Planning and Transportation Department with a copy of the recorded mylar.
- (3) *Surety Requirement:* In conjunction with the approval of a Final Plat, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 20.09; §Surety Standards.*
- (4) *Public Hearing:* A public hearing is not required.

(f) Plan Commission/Plat Committee:

- (1) *Decision:*
  - (A) Revision: The staff shall notify the petitioner in writing what revisions, changes, or further changes in the application are needed for approval.
  - (B) Approval: Following the petitioner's submittal of revised copies of the plans, the Plan Commission/Plat Committee shall approve the Final Plat.
  - (C) Sign and Seal: Upon approval of the Final Plat, the President of the Plan Commission or Chair of the Plat Committee shall sign and seal the plat at the appropriate locations.
  - (D) Notification: The staff shall then notify the petitioner of the Plan Commission/Plat Committee's actions.
  - (E) Recording: The petitioner shall then file the Final Plat for recording in the County Recorder's office, as required by law.
  - (F) Within thirty (30) days of recording the plat, the petitioner shall provide the Planning and Transportation Department with a copy of the recorded mylar.
- (2) *Surety Requirement:* In conjunction with the approval of a Final Plat, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 20.09; §Surety Standards.*

# Subdivision Control

- (g) Review Considerations: In reviewing Final Plats, the staff, Plan Commission, or Plat Committee shall review:
- (1) The written statement and supportive material submitted by the petitioner;
  - (2) The Preliminary Plat;
  - (3) The Final Plat;
  - (4) Any commitments or conditions of approval attendant to prior approvals;
  - (5) The testimony of the petitioner;
  - (6) The testimony of the public during the Preliminary Plat public hearing, when applicable;
  - (7) Any applicable development standards in *Chapter 20.05: Development Standards*;
  - (8) Any applicable subdivision standards in *Chapter 20.06: Subdivision Regulations*;
  - (9) Any applicable design standards in *Chapter 20.07: Design Standards*;
  - (10) Any other applicable provisions of the Unified Development Ordinance;
  - (11) Any requirements of the members of the Development Review Committee;
  - (12) The Planning and Transportation Department report; and
  - (13) Such other additional information as may be required by the Plan Commission to evaluate the petition.
- (h) Duration: If the Final Plat, or a phase thereof, has not been recorded within a maximum period of six (6) months from the date of approval by the Plan Commission or Plat Committee, the Final Plat shall be null and void and the Final Plat must again be submitted for approval, to the extent permitted by *Section 20.01.210: Effect of Change in the Law after Filing of Complete Application*. For a Final Plat where an initial phase was recorded within six (6) months of the date of approval by the Plan Commission or Plat Committee, successive phases shall be recorded within eighteen (18) months of the previous phase. If a successive phase fails to meet the eighteen (18) month requirement, the approval of the phases that have not been recorded shall be null and void and the Final Plat must again be submitted for approval, to the extent permitted by *Section 20.01.210: Effect of Change in the Law after Filing of Complete Application*.

## 20.09.200 Subdivision Control; Plat Vacation

- (a) **Intent:** The purpose of the Plat Vacation section is to outline the procedure employed by the City when considering a petition for the vacation of a subdivision. Further, the intent of the Plat Vacation section is to ensure that the statutory requirements established in the Indiana Code for the vacation of a subdivision are met.
- (b) **Prerequisites:**
  - (1) *Time Limitation:* After the termination of a Plat Vacation proceeding under *Chapter 20.09; Processes, Permits and Fees*, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for three (3) years.
- (c) **Applicability:**
  - (1) *Final Plat:*
    - (A) The owner of land in a Final Plat may file with the Plan Commission a petition to vacate all or part of the Final Plat pertaining to the land owned by the petitioner.
    - (B) In a case in which not all the owners of land in a Final Plat are in agreement regarding a proposed vacation, one (1) or more owners of the land in the Final Plat may file with the Plan Commission a petition to vacate all of the Final Plat or only that part of the Final Plat that pertains to land owned by the petitioner or petitioners. A petition under this subsection must:
      - (i) State the reasons for and the circumstances prompting the request;
      - (ii) Specifically describe the property in the Final Plat proposed to be vacated; and
      - (iii) Give the name and address of every other owner of land in the Final Plat.
  - (2) *Rights-of-way:* This Plat Vacation procedure shall not be used to vacate rights-of-way, regardless of whether they are platted. Rights-of-way shall be vacated pursuant to IC 36-7-3-12.
  - (3) *Covenants or Commitments:* The Plat Vacation petition may include a request to vacate any recorded covenants or commitments filed as part of the Final Plat. The covenants or commitments are then also subject to vacation.
  - (4) *Easements:* This Plat Vacation procedure shall not be used to vacate platted easements. Platted easements shall be vacated pursuant to *Section 20.09.310: Easements; Vacation*.
- (d) **Exceptions:**
  - (1) *Public Utilities:* *Chapter 20.09; Processes, Permits and Fees* notwithstanding, Plat Vacation proceedings do not deprive a public utility of the use of all or part of a public way or public place to be vacated, if, at the time the proceedings are instituted, the utility is occupying and using all or part of that public way or public place for the location and operation of its facilities. However, the utility may waive its rights under this subsection by filing its written consent in the Plat Vacation proceedings.
  - (2) *Easement Vacation:* Per IC 36-7-3-16, platted easements are vacated by the Common Council (see *Section 20.09.310: Easements; Vacation*).
- (e) **Application:**
  - (1) *Supportive Information:* The application shall include, but not be limited to, the following documents:
    - (A) Pre-submittal Meeting Documentation: The application shall include all documentation specified by the staff during the pre-submittal meeting.
    - (B) Application Form: The application shall include all documentation specified on the application form unless certain documentation is deemed superfluous by the staff due to the specific circumstances of the particular project.
    - (C) Additional Information: Such other additional information as may be required by the staff or other members of the Development Review Committee to evaluate the application.
- (f) **Plan Commission:**
  - (1) *Grounds for Remonstrances and Objections:* All persons may comment at the public hearing in accordance with the procedural rules of the Commission. A remonstrance or objection may be filed or raised by any person aggrieved by the proposed Plat Vacation, but only on one (1) or more of the following grounds:
    - (A) The Plat Vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous;

# Subdivision Control

- (B) The Plat Vacation would make access to the lands of the aggrieved person by means of a public way difficult or inconvenient;
  - (C) The Plat Vacation would hinder the public's access to a church, school, or other public building or place; and/or
  - (D) The Plat Vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.
- (2) *Decision:* The Plan Commission shall:
- (A) Approve the petition;
  - (B) Approve the petition with conditions and/or commitments;
  - (C) Disapprove the petition; or
  - (D) Continue the petition to a definite future meeting date.
- (3) *Findings of Fact:* The Plan Commission shall approve the petition for Plat Vacation of all or part of the final plat only upon making written findings that:
- (A) Conditions in the platted area have changed so as to defeat the original purpose of the final plat;
  - (B) It is in the public interest to vacate all or part of the final plat; and
  - (C) The value of that part of the land in the final plat now owned by the petitioner will not be diminished by vacation.
- (4) *Approval:*
- (A) Signed. The findings of fact shall be signed by the president of the Plan Commission.
  - (B) Recording. The Plan Commission shall furnish a copy of its decision to the County Recorder's Office for recording.
- (5) *Disapproval:*
- (A) Signed. The findings of fact shall be signed by the president of the Plan Commission.
  - (B) Notification. The Plan Commission shall furnish the petitioner with a copy of its decision.
- (6) *Plat Vacation Instrument:*
- (A) Signed. The Plat Vacation instrument shall be signed by the president of the Plan Commission and the owner of the vacated property.
  - (B) Recording. The petitioner shall record the Plat Vacation instrument in the County Recorder's Office within sixty days of the approval of the Plat Vacation. The petitioner shall deliver a copy of the recorded Plat Vacation instrument to the Planning and Transportation Department.
- (7) *Surety Requirement:* In conjunction with the approval of a Plat Vacation, an unless determined to be unnecessary by the Plan Commission, the petitioner shall provide financial surety for all public improvements pursuant to this chapter.

# Subdivision Control

## 20.09.210 Subdivision Control; Waivers and Modifications

- (a) **Intent:** When the Plan Commission finds that extraordinary hardships or practical difficulties may result from strict compliance with the subdivision regulations and/or that the purposes of the subdivision regulations may be served to a greater extent by an alternative proposal, the Plan Commission may approve Subdivision Waivers to the subdivision regulations of *Chapter 20.06: Subdivision Regulations* and *Chapter 20.07: Design Standards* so that substantial justice may be done and the public interest secured, provided that such Subdivision Waivers shall not have the effect of nullifying the intent and purpose of the subdivision regulations.
- (b) **Applicability:**
- (1) *Preliminary Plat:* The petitioner may only file a Subdivision Waiver petition in conjunction with a Preliminary Plat petition or with a Preliminary Plat Amendment petition.
  - (2) *Public Facilities:* Where the Subdivision Waiver has an impact on design and construction of public facilities, all appropriate public agencies will be given ample time to comment in writing to the Plan Commission.
  - (3) *Exclusive Control:* It is not within the jurisdiction of the Board of Zoning Appeals to grant Development Standards Variances of *Chapter 20.06: Subdivision Regulations* and *Chapter 20.07: Design Standards*.
- (c) **Exceptions:**
- (1) *Development Standards:* It is not within the jurisdiction of the Plan Commission to grant Subdivision Waivers to the provisions of *Chapter 20.05: Development Standards*.
- (d) **Plan Commission:**
- (1) *Review of Petition:* At their regularly scheduled meeting, the Plan Commission shall review:
    - (A) The written statement and supportive material submitted by the petitioner;
    - (B) The Preliminary Plat;
    - (C) The Subdivision Waiver;
    - (D) The testimony of the petitioner;
    - (E) The written and oral testimony of the public;
    - (F) The Growth Policies Plan;
    - (G) Any applicable subdivision standards in *Chapter 20.06: Subdivision Regulations*;
    - (H) Any applicable design standards in *Chapter 20.07: Design Standards*;
    - (I) Any other applicable provisions of the Unified Development Ordinance;
    - (J) Any requirements of the members of the Development Review Committee;
    - (K) The Planning and Transportation Department report; and
    - (L) Such other additional information as may be required by the Plan Commission to evaluate the petition.
  - (2) *Findings of Fact:*
    - (A) The Plan Commission may grant a Subdivision Waiver if, after a public hearing, it makes written findings of fact based upon the evidence presented to it in each specific case, that:
      - (i) The granting of the Subdivision Waiver shall not be detrimental to the public safety, health, or general welfare, or injurious to other property; and
      - (ii) The conditions upon which the request for a Subdivision Waiver is based are unique to the property for which the Subdivision Waiver is sought and are not applicable generally to other property; and
      - (iii) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the subdivision regulations is carried out (Financial hardship shall not constitute grounds for a waiver); and
      - (iv) The Subdivision Waiver shall not in any manner vary the provisions of the development standards, Growth Policies Plan, or Thoroughfare Plan.

# Subdivision Control

- (B) Exception: Due to the specialized nature of the following, the Plan Commission may permit modifications to the standards and procedures of this title as may be warranted; and such modifications need not comply with *Clause 20.09.210(d)(2)(A)(ii)* and *Clause 20.09.210(d)(2)(A)(iii)*.
  - (i) Subdivisions not involving any new streets;
  - (ii) Commercial or industrial subdivisions;
  - (iii) Cemetery plats; and
  - (iv) Condominium plats.
- (C) Approval: The findings of fact shall be signed by the President of the Plan Commission.
- (D) Disapproval:
  - (i) Signed: The findings of fact shall be signed by the President of the Plan Commission.
  - (ii) Notification: The staff shall furnish the petitioner with a copy of the Plan Commission's decision.
- (3) *Decision*: The Plan Commission shall:
  - (A) Approve the petition;
  - (B) Approve the petition with conditions and/or commitments;
  - (C) Deny the petition; or
  - (D) Continue the petition to a definite future meeting date.
- (e) Duration:
  - (1) A Final Plat application shall be filed not later than twelve (12) months after the date of approval of the Preliminary Plat, otherwise the Subdivision Waiver approval shall be considered void.
  - (2) One (1) extension of up to six (6) months may be authorized by the Planning and Transportation Director for reason/cause. The petitioner shall submit the request for extension in writing to the Planning and Transportation Director, and the Planning and Transportation Director shall make a written determination regarding his decision to extend or deny extension. Both the request and the determination shall be made part of the Subdivision Waiver record.

## 20.09.220 Certificate of Zoning Compliance

- (a) Intent: The intent of the Certificate of Zoning Compliance section is to outline the procedure by which proposed establishment of and alterations to uses, sites and structures are reviewed by the staff. This procedure is set forth in order to ensure that all such actions conform to the standards established by the Unified Development Ordinance.
- (b) Certificate of Zoning Compliance Required: The City requires that a Certificate of Zoning Compliance (herein after “CZC”) shall be obtained for any of the following actions. A single CZC may be issued for a combination of such actions, if they occur together. Any application for a CZC, permit or other approval for an action described in Division (5) of this Subsection shall be subject to the procedures outlined in *Section 20.09.230: Demolition and Demolition Delay*:
- (1) Alteration, erection, construction, reconstruction, division, enlargement, demolition, partial demolition or moving of any building, structure, or mobile home;
  - (2) Establishment of a use or change in use to another use (see *Chapter 20.11: Definitions; “Change in Use”*);
  - (3) Enlargement in the area used for any use or relocation of a use to another portion of a lot, site, or building;
  - (4) Grading, improvement, or other alteration of land, including paving or the establishment of drives or parking areas, or any other land distributing activity.
  - (5) Any action, whether or not listed in Divisions (1) through (4) of this Subsection, that would result in partial or complete demolition of any exterior portion of a building or structure that is listed as ‘Outstanding’, ‘Notable’, or ‘Contributing’ on the City of Bloomington Survey of Historic Sites and Structures. Such action shall be subject to the procedures outlined in *Section 20.09.230: Demolition and Demolition Delay*. An accessory building or structure not attached to the principal building or structure upon the listed parcel shall not be considered “listed” within the meaning of this ordinance unless the accessory building or structure is of the same era of construction as the principal building or structure, as determined by the staff. Such determination shall be based upon resources that may include but shall not be limited to Sanborn Company Fire Insurance maps, visual inspection of the accessory building or structure, and records and expertise of HPC or its staff.
  - (6) Tree removal. If such activity involves the removal of dead, dying, or hazardous trees, or exotic, invasive vegetation, as verified by the Planning and Transportation Department, no CZC is required. Tree removal requests which decrease the baseline canopy cover of a site require a CZC and must follow the procedures outlined in *Section 20.09.120: Site Plan Review* and comply with the requirements of *Section 20.05.044: Environmental Standards; Tree and Forest Preservation*.

# Permits

## 20.09.230 Demolition and Demolition Delay

- (a) Demolition Landscaping
- (1) *Applicability*: A demolition permit application for a lot subject to the standards of *Section 20.05.057: Landscaping Standards; Vacant Lot Landscaping* shall meet the requirements of this section.
  - (2) *Vacant Lot Landscaping Plan*: Any demolition permit application subject to this section shall be accompanied by a vacant lot landscaping plan meeting the standards of *Section 20.05.057: Landscaping Standards; Vacant Lot Landscaping*.
  - (3) *Exemption*: A demolition permit application shall be exempt from the requirements of this section if a site plan approval for the reuse of the subject lot has been obtained and has not expired.
- (b) Demolition Delay Required: No Certificate of Zoning Compliance (hereinafter “CZC”) authorizing release of a permit allowing the demolition or partial demolition of a structure that is listed as Outstanding, Notable or Contributing on the City of Bloomington Survey of Historic Sites and Structures, or any accessory structure of the same era of construction as the principal structure that is so listed, shall be issued earlier than ninety (90) or one hundred twenty (120) calendar days after notice has been given herein.
- (1) The ninety-day period shall apply in all cases unless the director of HAND, or his/her designee, finds that an additional thirty-day delay period is needed in order for the HPC to responsibly consider and determine whether to recommend designation of the property. The HAND director shall make such finding only where:
    - (A) There are multiple demolition permits and/or historic designation proposals pending or expected to come before the HPC during the ninety-day period; or,
    - (B) The demolition request presents unusually complex public policy issues due to the location or survey classification of the structure;
    - (C) The structure is located within an area that contains multiple surveyed properties, it is located within an area designated on the National Register of Historic Places, or the survey classification of the structure proposed for demolition or partial demolition is “Notable” or “Outstanding”. These criteria shall be sufficient, but not necessary, to justify a determination that the one hundred twenty-day period will apply;
    - (D) The HAND director, or his/her designee, will give notice of his/her determination to apply the one hundred twenty-day period to a demolition or partial demolition request in accordance with the procedures outlined herein.
  - (2) Staff shall give notice to the HAND director, or his/her designee, and to the property owner, his/her representative, for any petition involving a demolition or partial demolition covered by this section.
    - (A) The property owner, or his/her representative, upon being notified that his/her property is subject to the provisions of this section, shall be advised that his/her application for a permit may need to be amended to include materials required by both *Section 20.09.120(d)*, which outlines what is required for Site Plan applications, and the Rules and Regulations of the HPC, in order for the application to be considered complete and to be reviewed by all relevant City staff.
    - (B) Not later than thirty days after such notice is given by staff, the HAND director shall give notice to the chairperson of the HPC and to the owner, if the one-hundred-twenty-day waiting period is to be imposed.
  - (3) The owner, within three business days of being given the notice described herein by the Planning and Transportation Department, shall place upon the property where the structure is located, in plain public view, a notice to the public of the proposed demolition or partial demolition of the structure.
    - (A) Such notice shall be in such form as approved by staff.
    - (B) Such notice shall remain in place until termination of the waiting period.
    - (C) Noncompliance with this provision shall result in the delay period being extended by an amount of time equal to the amount of time, as reasonably determined or estimated by the staff, during which the notice was not properly in place.
    - (D) This section shall not apply to an application for partial demolition of a property classified as “Contributing” in a single family district if staff for the HPC reviews and releases the application. Staff’s decision shall be based on the same criteria utilized by the HPC when it renders a decision

about whether or not a property should be recommended for local historic designation. If staff for the HPC determines that full HPC review of an application for a partial demolition of a property classified as “Contributing” in a single family district is necessary then the owner shall post the notice described herein on the property.

- (4) The HPC may conduct a hearing, in its sole discretion, during the waiting period, to determine if the HPC wishes to recommend any structure described below herein be locally designated by the common council:
  - (A) “Contributing” structure located in any multifamily or non-residential zoning district.
  - (B) “Contributing” structure located in any single family district if the staff for the HPC determines that a review of the application necessitates full HPC review.
  - (C) “Notable” structure located in any zoning district of the City.
  - (D) “Outstanding” structure located in any zoning district of the City.
- (5) Staff for the HPC may review and release an application for partial demolition of a “Contributing” structure located in a single family district.
  - (A) Staff, for purposes of this subsection, shall be those persons who have the same or equivalent technical expertise as the members of the HPC as outlined in Bloomington Municipal Code Section 2.16.010(c).
  - (B) Staff’s decision shall be based on the same criteria utilized by the HPC when it renders a determination about whether or not a property should be recommended for local historic designation.
  - (C) If within seven (7) business days of receipt of an application for partial demolition by the City’s Planning and Transportation Department, the staff has not forwarded the matter to the HPC for further review, the application shall be released automatically and the provisions of *Section 20.09.230* shall be effectuated.
- (c) Exceptions. Exceptions to this section shall be as follows:
  - (1) *Early Termination of Waiting Period:* If within the ninety- or one hundred twenty-day period the HPC votes affirmatively not to recommend local historic designation to the common council; the HPC votes on a motion to recommend local designation and the motion fails; staff for the HPC decides not to recommend local historic designation to the HPC and common council (staff’s decision shall be based on the same criteria utilized by the HPC when it renders a determination about whether or not a property should be recommended for local historic designation); or the common council disapproves a recommended local historic designation of the subject property, then the remainder of the waiting period shall be considered waived and the certificate of zoning compliance shall be issued forthwith if all other requirements are met.
  - (2) *Locally Designated Buildings or Structures are Subject to Title 8 Provisions Regarding Demolition:* This section shall not apply to any structure that is within a property or group of properties locally designated as a historic district or a conservation district pursuant to Title 8, Historic Preservation and Protection of the BMC.
  - (3) *Emergency Waiver of Waiting Period:* The waiting period may be waived upon a written determination by the city HAND Department that there is an emergency condition dangerous to life, health or property that requires demolition prior to the expiration of the waiting period.
  - (4) *Structure Not Subject to Demolition Waiting Period More than Once in any One-Year Period:* No structure that has been subjected to the waiting period under this section shall be subject to a second waiting period until the passage of one year from the date of expiration of the first waiting period.
    - (A) During this one-year period, no action of the HPC or the common council may prevent issuance or effect revocation of a certificate of zoning compliance or demolition permit that is otherwise properly issued or application for which meets all requirements of the Bloomington Municipal Code.
    - (B) This provision shall not apply except to the extent that the work covered by the CZC or demolition or partial demolition permit, or application therefore, is substantially identical to the work shown in the submission that occasioned the first waiting period.
    - (C) For purposes of this section, "work" includes the proposed demolition, partial demolition and any proposed construction, reconstruction, or alteration associated therewith.
    - (D) For purposes of this section, "substantially identical" means without significant deviation in any

detail of any elevation or in the type, design, or location of materials that will be subject to public view.

- (E) For purposes of this section, "submission" shall mean the submission that is authorized to receive approval pursuant to *Section 20.09.030, Applications—General* of this chapter.
- (5) *Withdrawal of Application*: If an application for demolition or partial demolition that is subject to the demolition delay procedures of this unified development ordinance is withdrawn by the applicant, the demolition delay period shall be terminated and no certificate of zoning compliance for the withdrawn application shall be issued.
- (d) Issuance of Certificate of Zoning Compliance Authorizing Demolition:
  - (1) If within the ninety- or one hundred twenty-day waiting period the property is placed under interim protection or is locally designated as a historic or conservation district pursuant to Chapter 8.08, Historic Districts and Standards of the BMC, then no certificate of zoning compliance authorizing demolition or partial demolition may be issued except:
    - (A) Upon termination of interim protection without historic or conservation district designation being placed upon the property; or,
    - (B) Where historic or conservation district designation is placed upon the property, in accordance with and after all approvals required by Chapter 8.08.
  - (2) After expiration of the waiting period provided for herein, which shall include early termination of the waiting period a certificate of zoning compliance authorizing demolition shall be issued if owner has submitted a complete application and all other requirements of the Bloomington Municipal Code are met. Moreover, the recipient of a permit or other approval subject to this subsection shall be bound to the details of the elevations, and the design, type, and location of materials depicted in the submission, as provided for and defined in *Section 20.09.030, Applications—General*, and may not deviate from such depiction without applying for a new certificate of zoning compliance, application for which shall commence a new waiting period.
  - (3) No action of the HPC may prevent issuance or effect revocation of such certificate of zoning compliance, or a demolition permit issued in reliance upon such certificate of zoning compliance, for a period of one year from the end of the waiting period.
  - (4) For any structure that is exempt from the waiting period of this section, a certificate of zoning compliance authorizing release of a demolition or partial demolition permit shall be issued within a reasonable time following receipt by the Planning and Transportation Department of a complete application, provided all other requirements of the BMC are met.

## 20.09.240 Grading Permit

- (a) **Intent:** It is the intent of this section to mitigate the environmental impact of site development and to protect the quality of the waters of the City of Bloomington, Monroe County, and surrounding areas, and to provide a mechanism to insure compliance with *Chapter 20.05: Development Standards* of this UDO, and particularly the Environmental Standards of that Chapter, by providing a thorough permitting and inspection process for all grading activities.
- (b) **Prerequisites:**
  - (1) *Construction Plan:* As required by *Title 10, Wastewater* of the Bloomington Municipal Code, a Construction Plan including the Stormwater Pollution Prevention Plan for the site must be approved by the appropriate State and federal authorities prior to the issuance of a Grading Permit.
  - (2) *Planned Unit Development Approval:* An approved Final Plan must be in place prior to the issuance of a Grading Permit.
- (c) **Applicability:** No land-disturbing activity shall occur on platted or unplatted lands in any zoning district, unless a Grading Permit for such activity has been issued.
- (d) **Exceptions:**
  - (1) Land-disturbing activity covering an area less than 1,000 square feet;
  - (2) Land-disturbing activity on an individual single-family lot.
- (e) **Application:**
  - (1) *Filing Deadline:* An application for a Grading Permit may be submitted at any time.
  - (2) *Application Form:* The petitioner shall submit the completed application to the Planning and Transportation Department.
  - (3) *Supportive Information:* The application shall include, but not be limited to, the following documents:
    - (A) Construction Plan;
    - (B) Engineered estimate of erosion control features/financial guarantee for erosion control measures;
    - (C) Topography of the site - proposed and existing two-foot (2') contours;
    - (D) Identification of environmental features, including but not limited to karst, water, trees, and steep slopes.
- (f) **Planning and Transportation Department:**
  - (1) *Review:* The staff shall review a grading permit upon the receipt of a complete application and all supportive documents.
  - (2) *Decision:* The staff shall approve or deny the application within twenty (20) working days of the receipt of a complete application and all supportive documents.
  - (3) *Pre-construction Conference:* For all sites of one (1) acre or more, a pre-construction conference is required before any land-disturbing activity can commence. This conference will be between the staff and the petitioner. If land-disturbing activity commences without the benefit of a pre-construction conference, it shall be considered a violation of the Unified Development Ordinance. This conference shall include but not be limited to the proposed:
    - (A) Construction schedule;
    - (B) Memorandum of erosion control responsibility;
    - (C) Permit conditions of approval;
    - (D) Compliance with *Section 20.05.040: EN-03 [Environmental standards; Siltation and erosion prevention]*
    - (E) Identification of types of soil stock piles (working versus storage) and seeding requirements for such piles that achieve the objectives of this chapter.
  - (4) *Inspection:* Prior to the initiation of site grading, the staff shall inspect the erosion and sedimentation controls installed by the petitioner to ensure that they meet or exceed the measures in the approved construction plan.

- (5) *Correction of Deficiencies*: The staff shall apprise the petitioner in writing of any deficiencies in the installation of the erosion and sedimentation control measures. The petitioner shall schedule a follow-up inspection once the deficiencies have been corrected.
- (6) *Commencement of Grading*: Grading shall not commence until the staff has approved the installation of the erosion and sedimentation control measures for the site. Initiation of grading prior to receiving approval from the staff shall constitute a violation of the Unified Development Ordinance, and shall be addressed as provided in *Chapter 20.10: Enforcement and Penalties*.
- (7) *Record*: The staff shall maintain records of all applications, plans, and permits filed for a Grading Permit.
- (h) Additional Requirements: Compliance with the requirements set out in this provision shall not relieve any person of the independent obligation to comply with all applicable standards and practices set out in Indiana Administrative Code, 327 IAC 15-5 and 327 IAC 15-13, regarding storm water runoff associated with construction activity; the Indiana Stormwater Quality Manual developed by the Indiana Department of Environmental Management; all applicable provisions of Title 10: Wastewater of the Bloomington Municipal Code regarding storm water runoff; and all applicable rules, regulations, standards and specifications of the City Utilities Department regarding storm water management practices.
  - (i) Duration:
    - (1) Grading Permits shall be valid for a period of one hundred eighty (180) days, or run concurrently with the Building Permit or other construction authorizations, whichever is longer.
    - (2) *Extension*: At the written request of the petitioner, the staff may extend the period one (1) or more times for up to a maximum of an additional one hundred eighty (180) days. The staff may require additional erosion control measures as a condition of the extension if they are necessary to meet the requirements of this chapter.
  - (j) Changes or Amendments:
    - (1) The petitioner may submit revisions or amendments to an approved Grading Permit for consideration by the staff and the State, and federal authorities having jurisdiction. A revision or amendment to an approved Grading Permit shall only be authorized upon review and approval by all the State and federal authorities having jurisdiction.
    - (2) Changes to the Grading Permit must be approved in writing by the staff.

## 20.09.250 Certificate of Occupancy

- (a) **Intent:** The purpose of this section is to outline the procedure employed by the City in order to ensure compliance with all applicable ordinances and regulations when considering a request for a Certificate of Occupancy.
- (b) **Prerequisites:** For a Certificate of Occupancy to be issued each of the following must be successfully completed:
  - (1) Issuance of a Certificate of Zoning Compliance;
  - (2) Passage of a final inspection by the staff;
  - (3) Passage of a final inspection by the County Building Department;
  - (4) Passage of a final inspection by the City Fire Department;
  - (5) Passage of a final inspection by the Department of Housing and Neighborhood Development (HAND) for all rental properties.
- (c) **Applicability:** The City hereby requires that a Certificate of Occupancy be obtained prior to a building or structure being occupied or used in each of the following situations:
  - (1) Occupancy or use of any new building or structure;
  - (2) Re-use or re-occupancy of any existing building or structure that requires either a permit from the County Building Department or a Certificate of Zoning Compliance from the Planning and Transportation Department;
  - (3) Addition to any existing building or structure. Parts of the existing building or structure not included in the addition may continue to be occupied or used.
- (d) **Enforcement:** If a Certificate of Occupancy is required, it is unlawful and a violation of the Unified Development Ordinance for anyone to occupy or use a building or structure, or to cause, suffer or permit another to occupy or use a building or structure, until the staff recommends issuance of a Certificate of Occupancy to the County Building Department. Any violation of this provision shall be subject to a Stop Work Order, mitigation, and/or fines and penalties as specified in *Chapter 20.10: Enforcement and Penalties*.
- (e) **Planning and Transportation Department:** A Final Certificate of Occupancy shall be issued only after all requirements of the Certificate of Zoning Compliance have been completed. Due to weather or other circumstances, a Temporary Certificate of Occupancy may be issued without the required site improvements provided the owner has documented in writing their promise to complete the unfinished work, and the letter is to the satisfaction of the Planning and Transportation Director.

# Permits

## 20.09.260 Sign Permit

- (a) **Intent:** The purpose of the Sign Permit section is to provide a mechanism for enforcement of the sign regulations of this Unified Development Ordinance in order to: establish for all signs located on any premises a reasonable and impartial means to permit adequate communication; control confusing sign displays that present a hazard to pedestrians and motorists along streets; insure light, air, and open space; protect the natural beauty and environment of the City; safeguard and enhance property values; protect public and private investment in buildings and open spaces; and protect the public health, safety, and general welfare.
- (b) **Prerequisites:** The use requesting the Sign Permit shall be legally established on the property for which the signage is being requested.
- (c) **Applicability:** Except as otherwise provided, no person shall erect any sign as defined herein without first obtaining a Sign Permit from the Planning and Transportation Department.
- (d) **Exceptions:** Signs that are exempt from the Sign Permit requirement are specified in Chapter 20.05; §SI: Sign Standards.
- (e) **Application:** The application shall include all documentation specified on the application form including:
  - (1) Name, address, and telephone number of applicant;
  - (2) Location (address) of the building, structure, or property on which the sign is to be erected;
  - (3) A scaled drawing of the sign, showing the face composing the sign, the position of lighting or other extraneous devices, and any other components of the sign;
  - (4) A location plan showing the position of the proposed sign on any building or land and its position in relation to nearby buildings and to any private or public street right-of-way;
  - (5) Written consent of the owner of the building, structure, or land on which the sign is to be erected in the event the applicant is not the owner thereof;
  - (6) A copy of any required electrical permit issued for the sign;
  - (7) The location and dimensions of all other signage located on the building, structure, or property;
  - (8) Such other additional information as may be required by the staff to evaluate the application.
- (f) **Planning and Transportation Department:**
  - (1) The staff shall review the application upon receipt of a complete application and supportive documents.
  - (2) **Decision:** If the proposed sign is in compliance with all the requirements of this Unified Development Ordinance, including the signage limitations upon the site as a whole, a Sign Permit shall be issued.
    - (A) **Duration:** The sign authorized by a Sign Permit must be completed and erected within six (6) months of the date of issuance; otherwise, the Sign Permit shall lapse and become null and void, unless good cause for an extension of time for completion is approved by the Planning and Transportation Director.
    - (B) **Extension:** One (1) extension of up to six (6) months may be authorized by the Planning and Transportation Director for reason/cause. The petitioner shall submit the request for extension in writing to the Planning and Transportation Director, and the Planning and Transportation Director shall make a written determination regarding his or her decision to extend or deny extension. Both the request and the determination shall be made part of the Sign Permit record.
    - (C) **Changes or Amendments:** When a Sign Permit has been issued, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms and conditions of the Sign Permit without prior approval of the Planning and Transportation Director. When granted, a written record of such amendment shall be entered upon the original Sign Permit application and maintained in the files of the Planning and Transportation Department.

## 20.09.270 Temporary Use Permit

- (a) **Intent:** The purpose of temporary use provisions is to provide a mechanism for enforcement of the temporary use regulations of this Unified Development Ordinance, in order to allow short-term and minor deviations for uses which are temporary in nature, which will not adversely impact surrounding properties and land uses, and which can be terminated and removed at will.
- (b) **Prerequisites:** A specific temporary use permit may be granted only one (1) time per year on any individual zoning lot and is nonrenewable. Fireworks, Halloween pumpkin, and Christmas tree sales are considered separate uses.
- (c) **Applicability:** Except as otherwise provided, no person shall have a temporary use as defined herein without first obtaining a Temporary Use Permit from the Planning and Transportation Department. Temporary Use Permits may be granted pursuant to the standards of *Chapter 20.05; §TU: Temporary Use and Structure Standards*. Uses not specifically included in *Chapter 20.05; §TU: Temporary Use and Structure Standards* shall not be permitted.
- (d) **Exceptions:** Yard or garage sales, religious tent meetings; nonprofit events; and political rallies do not require a Temporary Use Permit subject to the standards set forth in *Chapter 20.05; §TU: Temporary Use and Structure Standards*.
- (e) **Application:** The application shall include all documentation specified on the application form unless certain documentation is deemed superfluous by the staff due to the specific circumstances of the particular project, including:
  - (1) Name, address, and telephone number of applicant
  - (2) Location (address) of the building, structure, or land on which the temporary use is to be located;
  - (3) A scaled drawing of the property, which shall demonstrate that the proposed temporary use does not displace required parking for any existing use, that it does not block existing drives, and that the site is arranged so that no business shall be conducted with vehicles stopped in a public right-of-way.
  - (4) Written consent of the owner of the building, structure, or land on which the temporary use is to be located in the event the applicant is not the owner thereof.
  - (5) Such other additional information as may be required by the staff to evaluate the application.
- (f) **Planning and Transportation Department Decision:** The staff shall examine such plans, specifications, and other data submitted with the application, and, if necessary, the building or premises upon which it is proposed to establish the temporary use. If the proposed temporary use is in compliance with all the requirements of this Unified Development Ordinance, a Temporary Use Permit shall be issued.
- (g) **Duration:** The duration of a Temporary Use Permit shall be as specified in *Chapter 20.05; §TU: Temporary Use and Structure Standards*.

# Easements

## 20.09.280 Easements; General

- (a) **Intent:** The purpose of *Section 20.09.280; Easements; General* is to outline the procedure for obtaining and recording easements and to insure that the statutory requirements of the Indiana Code for establishing easements are met.
- (b) **Applicability:** This section governs easements that are:
  - (1) Required and/or granted pursuant to a provision of the Unified Development Ordinance;
  - (2) Offered as a commitment by the petitioner; or
  - (3) Permitted or required as a condition of approval by the Plan Commission, Plat Committee, Board of Zoning Appeals, Hearing Officer, or staff.
- (c) **Form:** Easement instruments shall be prepared in a recordable form acceptable to the City Legal Department.
- (d) **Recording:** Approved easement instruments shall be recorded in the County Recorder's office. The original recorded easement shall be delivered to the Grantee and a copy shall be delivered to the Planning and Transportation Department.
- (e) **Covenants, Conditions, and Restrictions:** Inclusion of language defining easements in an instrument creating covenants, conditions, and restrictions shall not be sufficient; rather, easement instruments shall be independently recorded documents that may be modified, terminated, or vacated only as provided in this Unified Development Ordinance.

# Easements

## 20.09.290 Easements; Modification

- (a) **Intent:** The purpose of *Section 20.09.290; Easements; Modification* is to outline the procedure employed by the City when considering a petition for the modification of platted or unplatted easements. Further, the intent of the Easement Modification section is to ensure that the statutory requirements established in the Indiana Code for the modification of easements are met.
- (b) **Applicability:** This section governs easements that are:
  - (1) Required and/or granted pursuant to a provision of the Unified Development Ordinance; and
  - (2) Offered as a commitment by the petitioner; or
  - (3) Permitted or required as a condition of approval by the Plan Commission, Board of Zoning Appeals, Hearing Officer or staff.
- (c) **Request for Modification:** Either the grantor or the grantee of an easement may apply to the approving body for modification of the easement.
- (d) **Time Limitation:** If an Easement Modification petition has been denied, the petitioner shall not file a new application with the same or substantially similar request for a period of six (6) months.
- (e) **Recording:** If approved, the modified easement shall be recorded by the petitioner in the County Recorder's office. The original recorded easement shall be delivered to the Grantee and a copy shall be delivered to the Planning and Transportation Department.

# Easements

## 20.09.300 Easements; Termination

- (a) Intent: The purpose of *Section 20.09.300; Easements; Termination* is to outline the procedure employed by the City when considering a petition for the termination of an unplatted easement. Further, the intent of the Easement Termination section is to ensure that the statutory requirements established in the Indiana Code for the termination of easements are met.
- (b) Applicability:
  - (1) *Termination of Unplatted Easements*: When an easement has been established pursuant to a provision of the Unified Development Ordinance, permitted or required as a commitment or permitted or required as a condition of approval either the grantor or grantee may apply to the approving body for termination of the easement.
  - (2) *Time Limitation*: If an Easement Termination petition has been denied, the petitioner shall not file a new application with the same or substantially similar request for a period of six (6) months.
- (c) Exceptions: This section does not govern easements that are shown on a recorded plat.
- (d) Recording: If approved, the easement termination instrument shall be recorded by the petitioner in the County Recorder's office. The original recorded easement shall be delivered to the Grantee and a copy shall be delivered to the Planning and Transportation Department.
- (e) Removal of Improvements: When applicable, the petitioner shall remove any improvements associated with the use of the easement prior to the termination of the easement.

# Easements

## 20.09.310 Easements; Vacation

- (a) **Intent:** The purpose of *Section 20.09.310; Easements; Vacation* is to outline the procedure employed by the City when considering a petition for the vacation of a platted easement. Further, the intent of the Easement Vacation section is to ensure that the statutory requirements established in the Indiana Code for the vacation of easements are met.
- (b) **Prerequisite:** If the easement to be vacated was established as a result of a permitted or required commitment or condition of approval by the Plan Commission or Board of Zoning Appeals, the body that required the commitment or condition of approval shall approve both the Easement Vacation petition and the termination of the commitment or condition.
- (c) **Exceptions:** This section does not govern easements that are not:
  - (1) Required pursuant to a provision of the Unified Development Ordinance;
  - (2) Offered as a commitment by the petitioner;
  - (3) Required as a condition of approval by the Plan Commission or Board of Zoning Appeals; and
  - (4) Shown on a recorded plat.
- (d) **Common Council:** Persons who own or hold an interest in a lot or lots adjacent to a platted easement may petition the Common Council for vacation of the easement in the manner outlined in IC 36-7-3-12.
- (e) **Recording:** If approved, the easement vacation ordinance shall be recorded by the petitioner in the County Recorder's office. The original recorded easement shall be delivered to the grantee and a copy shall be delivered to the Planning and Transportation Department.
- (f) **Removal of Improvements:** When applicable, the petitioner shall remove any improvements associated with the use of the easement prior to the vacation of the easement.

# Surety Standards

## 20.09.320 Surety Standards; Performance Surety

- (a) **Intent:** In conjunction with the approval of a Final Plat, the petitioner shall be required to provide a financial performance guarantee, by performance bond or an irrevocable, unconditional, acceptable letter of credit issued by a financial institution acceptable to the City, that all public facility improvements and installations required under the provisions of this title and Planning and Transportation Department requirements shall be completed.
- (b) **Applicability:**
  - (1) A performance agreement between the petitioner and the City, supported by a performance bond or irrevocable letter of credit, shall be required ensuring the timely and proper installation of required public facility improvements; provided, however, that any improvements to be dedicated to Monroe County within the City of Bloomington planning jurisdiction area shall be bonded in accordance with Monroe County bonding policy.
  - (2) The performance guarantee for each individual public facility improvement or installation may be handled separately and shall in no way be contingent on the completion of any other individual public facility improvements and installations or their performance guarantees.
  - (3) The posting of a performance guarantee may be accepted for incomplete requirements that will be completed as per a written agreement with the City. The time period and amount of the performance guarantee shall be determined by the Board of Public Works and shall comply with Ind. Code §36-7-4-709(i).
- (c) **Planning and Transportation Department:**
  - (1) *Review:* The Planning and Transportation Department shall review the estimate upon receipt of a complete application and supportive documents. The Planning and Transportation Department shall verify that the performance bond or letter of credit shall:
    - (A) Be in a sum of not less than one hundred twenty-five percent (125%) of the approved estimate of the total improvement construction cost of the project in order to be sufficient to complete the improvements and installations in compliance with the Unified Development Ordinance and Planning and Transportation Department requirements;
    - (B) Provide surety satisfactory to the City or to the County;
    - (C) Run to and be in favor of the City or the County;
    - (D) Specify the time for the completion of the improvements and installations (both on- and off-site);
    - (E) Be in effect and shall not terminate until a period of two (2) years after the date of substantial completion of the public improvements, but in no situation shall the performance bond or letter of credit be permitted to have an effective period greater than three (3) years. The Performance Surety will remain in effect during this two (2) year period in the amount of five percent (5%) of the original Performance Surety, or \$10,000.00, whichever is greater, or as determined by the Transportation and Traffic Engineer; and
    - (F) Be in a form approved by the City Legal Department.
  - (2) *Report:* The Planning and Transportation Department shall recommend approval or rejection of the Performance Surety to the Board of Public Works.
  - (3) *Record:* The Planning and Transportation Department shall maintain records of all applications, plans, and permits filed for a Performance Surety.
- (d) **Duration:**
  - (1) *Time Limit:* The completion of public facility improvements and installations shall be within two (2) years of the approval of the project.
  - (2) *Extension of Completion Time:* Should the petitioner not complete the public facility improvements and installations as herein required within a two-year period, the Planning and Transportation Department may approve the petitioner's written request for an extension of time for up to one (1) additional year, granted at six-month intervals and conditioned in every case upon extension or renewal of the surety accordingly, for completion of the required public facility improvements and installations, but in no situation shall an extension of a performance bond or letter of credit be permitted to have an effective period greater than

three (3) years.

- (3) *Nonperformance*: Should the petitioner not complete the public facility improvements and installations as herein required within the two-year period or within any time extension approved by the Planning and Transportation Department, the City may take the necessary steps to proceed with the completion of the public facility improvements and installations, making use of the performance bond or letter of credit.
- (4) *Expiration*: The performance bond or letter of credit shall be in effect and shall not terminate until thirty (30) calendar days after the Certificate of Final Acceptance is approved by the Planning and Transportation Department, and the Maintenance Surety has been accepted.

(e) Changes or Amendments:

- (1) *Performance Surety Reductions*: Annual partial releases of performance sureties held by the City shall be approved by the City Planning and Transportation Department in accordance with a partial release schedule agreed to in a signed written document, said document being signed by the Director of the Planning and Transportation Department, or his or her designee, and the developer, or his or her designee.
- (2) The following standards shall apply to any request for a bond reduction:
  - (A) No more than three (3) reductions shall be permitted within any twenty-four-month period.
  - (B) No performance surety shall be reduced beyond seventy-five percent (75%) of the original bond amount.
  - (C) Periodic partial releases shall not occur before completion of at least thirty percent (30%) of the improvements covered by the Performance Surety.

# Surety Standards

## 20.09.330 Surety Standards; Certificate of Final Acceptance

- (a) **Intent:** The purpose of the Certificate of Final Acceptance section is to outline the procedure employed by the City in order to ensure compliance with all applicable ordinances and regulations when considering a petition for a Certificate of Final Acceptance.
- (b) **Applicability:** When the required public facility improvements and installations for any project for which a Performance Surety has been submitted have been completed, the petitioner shall apply for a Certificate of Final Acceptance from the Planning and Transportation Department.
- (c) **Planning and Transportation Department:**
  - (1) **Application:** Upon completion of the public improvements covered by the Performance Surety, the petitioner shall apply to the Planning and Transportation Department for a Final Inspection of the work.
  - (2) **Inspection:** The Planning and Transportation Department shall inspect the improvements for compliance with this title and Planning and Transportation Department requirements.
  - (3) **Recommendation:** The Planning and Transportation Department shall recommend that the Performance Surety be released, extended, or declared in default. The Planning and Transportation Director shall act on the release, extension, or default of the Performance Surety.
  - (4) **Record:** The Planning and Transportation Department shall maintain records of all applications, plans, and permits filed for a Certificate of Final Acceptance.
  - (5) **Conditions for Final Acceptance of Public Improvements:**
    - (A) Within the City of Bloomington: The Board of Public Works shall accept public improvements that meet the following conditions:
      - (i) The completed public improvements shall comply with the design standards of *Chapter 20.07: Design Standards*; have been constructed in accordance with Planning and Transportation Department requirements; and have been installed in accordance with the approved plans;
      - (ii) All final inspections required by the Bloomington Municipal Code have been completed and the improvements found to be acceptable by the Planning and Transportation Department;
    - (B) Extraterritorial Jurisdiction: Any public improvements installed pursuant to a Monroe County surety within the City's extraterritorial planning jurisdictional shall be inspected and accepted by Monroe County and the Planning and Transportation Department in accordance with their respective surety policies.

# Miscellaneous Processes

## 20.09.340 Administrative Interpretations

- (a) **Intent:** The interpretation authority established by *Chapter 20.09: Processes, Permits and Fees* is intended to recognize that the provisions of this Unified Development Ordinance cannot, as a practical matter, address every specific situation to which they may have to be applied. In particular, certain categories of uses are listed as either conditional or permitted, but certain specific proposed uses may not clearly fall within the common ordinary meaning of any of the listed uses. Many such situations can be readily addressed by an interpretation of the specific provisions of this Unified Development Ordinance in light of the general and specific purposes for which those provisions have been enacted. Because the interpretation authority established is an administrative rather than a legislative authority, an interpretation shall not have the effect of adding to or changing the essential content of this Unified Development Ordinance but is intended only to allow authoritative application of that content to specific cases.
- (b) **Prerequisites:**
- (1) **Parties Entitled to Seek Interpretations:** Applications for Administrative Interpretations may be filed by any person having a legal or equitable interest in property that gives rise to the need for an interpretation; provided that interpretations shall not be sought by any person based solely on hypothetical circumstances or where the interpretation would have no effect other than as an advisory opinion.
- (c) **Applicability:** The Planning and Transportation Director, subject to the procedures, standards, and limitations of this Chapter, may render written interpretations of the provisions of this Unified Development Ordinance and of any rule or regulation issued pursuant to it.
- (d) **Applications:**
- (1) Refer to application requirements found at *Section 20.09.030: Applications; General*.
- (e) **Planning and Transportation Department:**
- (1) **Action on Application:** The Planning and Transportation Director shall inform the petitioner in writing of his or her interpretation, stating any specific precedent, the reasons, and the analysis upon which the determination is based.
  - (2) **Review Considerations:** The following standards shall govern the Planning and Transportation Director, the Plan Commission, and the Board of Zoning Appeals on appeals from the Planning and Transportation Director, in issuing a Land Use Determination:
    - (A) Any listed use defined in *Chapter 20.11: Definitions*, shall be interpreted as therein defined;
    - (B) No Land Use Determination shall authorize any use in any zoning district unless evidence is presented demonstrating that it will comply with the general zoning regulations established for that particular zoning district;
    - (C) No Land Use Determination shall authorize any use in a particular zoning district unless such use is substantially similar to other uses specifically listed as permitted or conditional in such zoning district and is more similar to such uses than to other uses listed as permitted or conditional in another zoning district;
    - (D) If the proposed use is most similar to a use allowed only as a Conditional Use in the zoning district, then any Land Use Determination authorizing such use shall be subject to Conditional Use approval pursuant to *Section 20.09.150: Conditional Use*; and
    - (E) No Land Use Determination shall allow the establishment of any use that would be inconsistent with the statement of purpose of the zoning district in question, unless such use meets the standard of either *Subdivision 20.09.340(e)(2)(C)* or *Subdivision 20.09.340(e)(2)(D)*.
- (f) **Decision:**
- (1) **Approval:** If the Planning and Transportation Director determines that the use is significantly like a permitted use in the subject zoning district, the Planning and Transportation Director may approve the land use.
    - (A) **Written Notice to Petitioner:** The staff shall give the petitioner written notice of said approval.

## Miscellaneous Processes

- (2) *Denial*: If the Planning and Transportation Director determines that the use is not significantly like a permitted use in the subject zoning district, he or she shall deny the land use.
  - (A) *Written Notice to Petitioner*: If the Planning and Transportation Director denies the land use, the staff shall give the petitioner written notice of said denial and apprise the petitioner of their right to an Administrative Appeal per *Division 20.09.340(i)(1): Appeals from Planning and Transportation Director Interpretations*.
- (g) Effect of Land Use Determination: No Land Use Determination authorizing a particular use in a particular zoning district shall authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits and approvals that may be required by the ordinances of the City including, but not limited to, a Certificate of Zoning Compliance, a Building Permit, a Certificate of Occupancy, subdivision approval, and Site Plan approval.
- (h) Limitations on Land Use Determination: A Land Use Determination finding a particular use to be permitted, or allowed as a Conditional Use in a particular zoning district, shall be deemed to authorize only the particular use for which it was issued, and such interpretation shall not be deemed to authorize any allegedly similar use for which a separate Land Use Determination has not been issued.
- (i) Board of Zoning Appeals:
  - (1) *Appeals from Planning and Transportation Director Interpretations*: The Board of Zoning Appeals shall, pursuant to *Section 20.09.350: Administrative Appeal* of this Unified Development Ordinance, hear and decide appeals from any Administrative Interpretation by the Planning and Transportation Director acting pursuant to his authority and duties under *Section 20.09.340; Administrative Interpretation*.

# Miscellaneous Processes

## 20.09.350 Administrative Appeals

- (a) **Intent:** The purpose of this section is to outline the procedure employed by the City in order to afford citizens an avenue of appeal when there is some doubt that an administrative official, hearing officer, staff member, administrative board or other body, except the Plan Commission, has rendered a correct interpretation of the applicable ordinances and regulations while administering or enforcing of any part of this Unified Development Ordinance.
- (b) **Applicability:**
  - (1) An Administrative Appeal may be made by any person aggrieved by an order, requirement, decision, or determination made by an administrative official, hearing officer, staff member, administrative board or other body, except the Plan Commission, charged with the administration or enforcement of any part of this Unified Development Ordinance.
  - (2) *Stop Work Order:*
    - (A) Authority: When an appeal from the decision of an administrative official or body has been filed, the Planning and Transportation Director may issue a Stop Work Order on the premises affected.
  - (3) This Administrative Appeals section shall not apply to fines levied under the authority of *Chapter 20.10: Enforcement and Penalties*. Such fines may be appealed under the procedures specified in *Chapter 20.10: Enforcement and Penalties*.
- (c) **Application:**
  - (1) *Filing Deadline:* An Administrative Appeal must be filed with the Planning and Transportation Department within five (5) days of the order, requirement, decision, or determination that is being appealed.
- (d) **Review:** At their next regularly scheduled public meeting, the Board of Zoning Appeals shall review:
  - (1) The written statement and supportive material submitted by the appellant;
  - (2) The record of action supplied by the administrative official or body from which the appeal is taken;
  - (3) The written and oral testimony of the public;
  - (4) The testimony of the appellant; and
  - (5) The testimony of the administrative official or body from which the appeal is taken.

# Amendments to Ordinance Text

## 20.09.360 Amendments to Ordinance Text

- (a) **Intent:** The purpose of this section is to outline the procedure employed by the City when considering a petition for an amendment to the text of the Unified Development Ordinance. Further, the intent of the Ordinance Text Amendment section is to ensure that the statutory requirements established in the Indiana Code for amending the ordinance text are met.
- (b) **Prerequisites:** Only the members of the Common Council or the Plan Commission shall have standing to initiate a proposal to amend the text of the Unified Development Ordinance.
- (c) **Preparation:** The staff shall prepare the proposal upon the direction of either the Plan Commission or the Common Council. The staff shall prepare the proposal so that it is consistent with IC 36-7-4-601.
- (d) **Complete Submittal:** The staff shall:
  - (1) Assign the item a case number;
  - (2) Place the item on an agenda of the Plan Commission.
- (e) **Review:** In reviewing the proposal, the Plan Commission and Common Council shall pay reasonable regard to:
  - (1) The Growth Policies Plan;
  - (2) Current conditions and the character of current structures and uses in each zoning district;
  - (3) The most desirable use of land in each zoning district;
  - (4) The conservation of sensitive environmental features;
  - (5) The conservation of property values throughout the jurisdiction; and
  - (6) Responsible development and growth.
- (f) **Public Notice:**
  - (1) *Published:* The staff shall be responsible for publishing notice pursuant to the Plan Commission Rules of Procedure.
  - (2) *Proof:* The staff shall be responsible for filing proof of published notice in the petition file.
- (g) **Public Hearing:** Within sixty (60) days of initiating a proposal to amend the text of the Unified Development Ordinance or of receiving a proposal from the Common Council, the Plan Commission shall hold a public hearing in accordance with the Plan Commission Rules of Procedure.
- (h) **Decision:** The Plan Commission shall:
  - (1) Certify and forward the proposal to the Common Council with:
    - (A) A favorable recommendation;
    - (B) A negative recommendation;
    - (C) No recommendation; or
  - (2) Continue the proposal to a definite future meeting date.
- (i) **Rejection or Amendment by the Common Council:** If the Common Council returns the proposal, the Plan Commission shall consider the rejection or amendment, and shall vote on the proposal within forty-five (45) days in accordance with IC 36-7-4-607.
- (j) **Publication:** If the proposal is adopted by the Common Council pursuant to IC 36-7-4-607, the Plan Commission shall arrange for the inclusion of the amended text in the Unified Development Ordinance printed by the City.
- (k) **Common Council Action:** The Common Council shall vote on the proposal within ninety (90) days of certification by the Plan Commission in accordance with IC 36-7-4-607, which governs whether the proposal is adopted or defeated.

